# A STUDY OF PROTECTION FOR BATTERED WOMEN

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Women's Research Centre

January 1982

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Rae Mabriel

# A Study of Protection for Battered Women

prepared by

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N.B. The analysis presented in this report is the Women's Research Centre's. It does not necessarily represent the views of the federal Department of Justice or the B.C. Legal Services Society.

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# CHAPTER ONE - INTRODUCTION

## I.A. BACKGROUND

The Women's Research Centre has been involved in the issue of wife battering for several years. The Centre's initial work focussed on public education aimed at advancing a clearer understanding of the issue and support for the development of services for battered women. Members of the Centre have been involved in advisory committees regarding the establishment of such services, including transition houses and the Y.W.C.A.'s Munroe House - second stage housing for battered women. In addition, Centre members participated in the 1977 Symposium on Family Violence in Vancouver and in committees of the subsequent United Way Task Force on Family Violence until 1979.

In 1978 the Centre produced a report entitled The Social Organization of Family Violence: An Ethnography of Immigrant Experience in Vancouver, which was based on immigrant women's experience of being battered and analyzed how their experience is located within the Canadian social and economic context.

In 1979-80, the Research Centre conducted a joint research project with Vancouver Transition House of battered women's perspective on wife assault. The research report, Battered and Blamed, published in November 1980, documents women's situations, their needs and concerns, and the function of Transition House. It contains case histories; a description of assault in all its aspects - physical, psychological and sexual; and an analysis of ways of dealing with the consequences of wife battering, including battered women's attempts to change their own situations and the responses of Transition House, the medical and helping professions as well as the police and legal system.

In 1980, the Centre also published A Perspective on Intervention in Cases of Wife Assault - A Discussion Paper and A Review of Munroe House: Second Stage Housing for Battered Women.

In addition, members of the Women's Research Centre have continued to work with and consult other organizations involved in the issue of wife assault. These include Vancouver's Battered Women's Support Services, the Justice Institute of British Columbia, transition houses across Canada, and government departments and agencies. A Study of Protection for Battered Women is grounded in the Centre's previous work on wife assault.

## I.B. RESEARCH RATIONALE

The Women's Research Centre's extensive work over several years on the issue of wife battering indicated that one of the most severe problems battered women face is the lack of adequate protection. In addition, transition house workers and legal or social services professionals, who work with battered women, have found that the effectiveness of their support or programmes is limited to a frustrating extent because it is often impossible to ensure that the women will be protected against further assaults by their husbands. This lack of protection was identified as a priority for remedial action by a national consultation of wife battering held in Ottawa, in March 1980 by the Canadian Advisory Council on the Status of Women.

In April 1980, the Centre decided to undertake a research project to identify practical changes in the administration and policies of the legal system, as well as in the health care and social welfare systems, that would result in adequate protection for battered women.

The Centre's work on wife assault provided a framework for examining the protection problem. This framework involves an understanding of the realities of wife assault and the problems battered women encounter in trying to stop the assaults.

### I.B.1. The realities of wife assault

Documentation of battered women's actual experience shows many of the theories that commonly attempt to explain wife assault are over-simplifications, flawed by the lack of empirical evidence to substantiate them. The empirical data gathered by the Women's Research Centre in its work discloses some of the realities of wife battering.

There is no accurate profile of the battered woman. Battered women come from diverse circumstance and socio-economic status. Some are financially independent of their husbands. However, like the majority of Canadian women, most battered women are economically dependent on their husbands or have skills and training that equip them for lower-paid occupations. Many battered women we have interviewed had experienced violence in their parental homes; others had not. According to the women's accounts, the same variation is true of the men who battered them. Many battered women married to escape unhappy backgrounds while others hoped

to replicate their parents' good marriages. Battered women's expectations of marriage, which were largely positive and optimistic, were not fulfilled whether they married men from happy or unhappy backgrounds. Their husbands' violence against them was a major problem in their marriages but there were often attendant problems such as concerns over money and their husbands' devaluation of the women's work in the home, including child care.

It is difficult to offer a definition of battering which does not run the risk of excluding incidents of violence. Many couples quarrel, some may throw objects around, shout insults, or attempt to make the other appear childish and wrong. Occasionally, a spouse may strike the other in anger. While such a relationship may potentially be one in which battering could occur, it does not display the characteristics of battering: the attempt to control and punish the woman; the fact that the violence is directed primarily against the woman; that no attempt at negotiation to resolve the conflict occurs; that no reasonable change in her behaviour stops the abuse; that she is seen during the battering as the rightful object of violence; that despite periods of remorse, the husband does not of his own accord, quit battering; that the violence does not necessarily occur during or after a verbal argument.

According to our research, the physical violence battered women experience at their husbands' hands ranges from assaults causing bruises to injuries requiring extensive medical treatment. Their husbands hit them in the head and face, punch or kick them, stab them and, in some cases try to murder them. Women reported being assaulted with such weapons as the burner rack from a stove or broken bottles, as well as with knives and guns. Assaults resulted in bruises, broken bones, internal injuries, torn ligaments and dislocated joints. For many women the battering began early in their marriages; for others it began after years of marriage. For some, their husbands' assaults were a regular occurrence, every day, each week; other women were assaulted sporadically.

A husband's reaction to his wife's pregnancy and a concomitant jealousy of the couple's children was cited by some women as a key factor in their husbands' violence. Another widely-reported factor were financial problems, including the husband's refusal to provide the necessary funds to meet the family's needs. The most prevalent factor, evident in women's accounts of

how the battering happened, was the issue of control - i.e. violence resulting from the husband's frustrated desire to exercise absolute control over his wife's behaviour. This desire for control embraced all aspects of the woman's life, including her work in the home, caring for the family and maintaining the household, her social life and contacts through her family or work outside the home.

Some women described their husbands beating them for the first time during pregnancy. In many cases such assaults caused miscarriages. And frequently, the assaults began when the children were born - which some women attributed to their husbands not wanting to take responsibility, financially and otherwise, for children. (It should be noted that many women said their husbands had also threatened to or actually did beat their children.) Women reported being beaten when they asked their husbands for money for their children's clothing or for groceries for the family. Some said they were assaulted when their husbands had spent all their household money on drinking or gambling or when bills piled up. For many women, visiting with friends, coming home late from seeing a movie or keeping in touch with their families by telephone or letters precipitated violence from their husbands.

Women indicated that their husbands often seemed to see themselves as the supervisors of the household. They required that their wives run it efficiently according to the husbands' standards - standards which were rarely articulated until the women failed to meet them. Other women described their husbands dictating what housework should be done and inspecting the window sills, stoves or the tops of doors to determine whether "proper" standards had been met. In some cases women were beaten for not doing the housework fast enough. It should be noted that alcohol was <u>not</u> cited by the women we interviewed as a key factor in their husbands' assaults. For example, in the research the Centre conducted with Vancouver Transition House (Barnsley et al., <u>Battered and Blamed</u>, 1980, p.67) less than 25 per cent of the residents mentioned alcohol abuse as a circumstance of the assaults. And even in those relatively few cases where the husband's alcohol abuse was noted as a problem, it was not a consistent feature of the assaults.

In addition to physical assaults, many battered women are also the recipients of psychological and sexual abuse. The three major aspects of psychological abuse are: physical isolation, whereby husbands isolate

their wives from friends, relatives, and the community by means of threats, accusations, and verbal abuse of friends/relatives, as well as by depriving their wives of access to the means of developing social contacts, by placing restrictions on money, time, et cetera; insults, criticisms, accusations designed to undermine women's work, self-respect, and sanity; and threats of beatings and murder.

The sexual abuse which battered women described in our research consisted of rape; explicit or implicit threats of violence if they did not comply with their husbands' sexual demands; and violent sexual activity. The women were expected to comply with their husbands' desires and authority; if they did not they were berated, beaten, and/or threatened with physical assaults and rape.

Wife assault consists of physical, psychological and/or sexual violence committed against women by their husbands. It is a crime - provisions in the Criminal Code of Canada make it clear that such an assault is against the law. No one has the right to assault another person. No one deserves to be beaten. Analysis of the specific circumstances of wife assault indicates that the violence is not only unwarranted by the woman's behaviour but is, in fact, incidental to it. Wife assault is a reality in our society because men have the socially ascribed authority to make the rules in marriage; and because violence against their wives is accepted, in the eyes of society, as an appropriate instrument of control. The social and economic structure of marriage, as an institution in which women are dependent on men, requires this assignment of authority to men.

I.B.2. Problems battered women encounter in trying to stop the assaults

Women do not like to be beaten. The Women's Research Centre's interviews with battered women indicate clearly that they try in every way possible to stop their husbands' assaults. Women usually tried first to fulfill their socially ascribed responsibility to preserve their marriages. They described their attempts to satisfy their husbands, to normalize the relationship. They tried everything they could - not talking so much, talking more, staying home more, going out more, catering to their husbands' wishes, standing up for themselves. Significantly, their efforts were unsuccessful: a woman cannot control her battering husband. The reasons for his behaviour are outside her control, and she is undermined by

economic dependence and traditional attitudes about who has the right to make decisions in the family. She does not provoke the beatings, although any particular beating will be blamed on some piece of "misbehaviour." Women who are told to try to "get along" with a battering husband are being told to do something which is impossible to do.

Since battered women are often isolated by their husbands, their ability to seek help is restricted. In addition, the social stigma associated with wife battering and the view that what happens in the family is a private matter are inhibitions to seeking assistance. However, many women reported that they had tried counselling programs, including marriage counselling, as a possible solution to the problem. In most cases the husbands involved refused to participate on the grounds that they didn't have a problem. In those cases where counselling was tried, it was unsuccessful. The counsellors, psychologists and psychiatrists incorrectly constructed wife assault as an interactional problem, blamed the women for provoking the assaults, and held the women responsible for rehabilitating their assailants. This approach serves to absolve the batterer of responsibility for his own behaviour and also ignores the risks to the woman's safety. The medical model, on which this approach is based, has permeated much of the health care and social service fields. In large part this accounts for the fact that battered women were unable to receive adequate assistance from the professionals they approached in those areas.

Although it is commonly assumed that women stay in battering situations, this is not the case. Battered women, out of self-preservation and/or fear for their children, do try to leave their violent marriages. (Over 70 per cent of the population for the research project the Centre conducted with Vancouver Transition House.) In many cases, they try repeatedly to leave.

However, women cannot easily leave the men who beat them - the battering is accompanied by other forms of control and isolation, and all these factors combined leave the women with few resources to change or leave their relationships. A crisis usually forces women to leave - they may return one or more times before they find a way to leave for good. The major problems a battered woman faces are: she has nowhere to go; no protection from her husband; no money to enable her to stay away; and very

little help from the "helping professions." Some women - one in every five murder victims - do not escape in time.

The structures and values of society effectively inhibit women's social or economic independence. Battered women face the same difficulties of inequality in job opportunities and pay scales and the lack of child care that all women face in our society. If women seek income assistance as a means of supporting themselves and their children, their income from welfare payments and other benefits combined will be well below the poverty line. Affordable, adequate housing for single mothers and their children is hard to find. Support services, to help battered women to deal with the difficulties of being single mothers and the effects of the assaults they have endured, are scarce. Facilities and programs to help children to deal with the consequences for them of wife battering are virtually non-existent.

Of all the resources women utilized to deal with their situations, transition houses were the only resource they consistently assessed positively. Among those who have examined the problem of wife assault, transition houses are widely recognized as the most viable alternative service available to many battered women. However, most transition houses operate at 100 per cent capacity and are forced to turn women away, because of lack of space. More transition houses are clearly needed.

Transition houses cannot and should not be expected to solve all the problems battered women face. Further, many battered women may not need or be able to go to a transition house to deal with their situations. In addition, ongoing support services, post-transition house, are a major need. Support groups and services, designed specifically to assist battered women, are required. More second stage facilities, such as Vancouver's Munroe House, are necessary for those women who require supplementary assistance in establishing their independence from their husbands.

The lack of adequate protection has repeatedly been identified as a central problem facing battered women. Many women described being afraid to seek help from the police or the legal system because "it wouldn't do any good" or it would make their husband more violent towards them. Like most citizens, a battered woman is unlikely to know much about the laws that govern her life until she tries to use them. This lack of legal information inhibits many women from seeking protection.

However, women who did call the police and/or pursued legal options were not protected. In many cases, they not only left their husbands and laid assault charges, but even obtained a divorce. Nevertheless, these women described being forced to flee when their husbands found the family's new address. Others were abducted by their husbands or harassed repeatedly. They live desperate lives of terror as a result.

The problems a battered woman encounters in trying to prevent further assaults by her husband are interconnected. Obviously, she needs quick and effective action by the police and the legal system. However, she may also require assistance from workers in the health care and social welfare systems before and after she takes legal action. Similarly, information on the law and legal processes, as well as support services - such as those provided by a transition house - will be essential for many battered women.

An understanding of these problems, and their interconnection, is an important dimension of a framework for examining the protection problem.

In the Centre's work on the issue of wife assault, the problem of inadequate protection for battered women has emerged repeatedly. In trying to address the problem, one of the major obstacles has been inadequate empirical data on how the systems which could afford protection actually work. A Study of Protection for Battered Women was undertaken in order to provide a clearer picture of what protection would look like and how it could be achieved. In this research we have documented battered women's experience with the legal system, including the police. And we have examined the social welfare and health systems, as well as the legal system, from the perspectives of those who work in them. This report presents the results of our research.

## I.C. TERMS OF REFERENCE OF THE RESEARCH CONTRACT

A Study of Protection for Battered Women was given financial support by the federal Department of Justice and the B.C. Legal Services Society. According to appendix A - "Project Description" - the agreement between the Women's Research Centre and the Department of Justice of Canada states that the purpose of the project was:

> (1) To investigate what protection could be provided, based on the actual experiences of battered women, transition house workers and legal and social service workers.
>
> Areas of investigation would include:
>
> a) the relative effectiveness of peace bonds versus restraining orders;
>
> b) the possibility of imposing conditions on release when a woman has laid an assault charge against her husband;
>
> c) the feasibility of requiring "supervised access" to the child(ren) when a man is charged with assault by his wife;
>
> d) an assessment of alternate sentencing and diversion programs, such as arrest policy and pre-trial release.
>
> (2) To prepare a set of guidelines to ensure protection for battered women.

The agreement between the Centre and the Legal Services Society of British Columbia referred to the aforementioned points and added the condition that:

> One of the products of the research will be the development and implementation of workshops to provide battered women and individuals with information on protection.

The terms of these agreements guided the research we conducted.

## I.D. RESEARCH PROCESS

In April 1980, the Women's Research Centre began a process of applying for funds to undertake a study of protection. Application was made initially to the Legal Services Society of B.C. - Public Legal Education Programme, and subsequently to the Criminal Law Reform Fund of the federal Department of Justice.

The agreements between the Centre and the Department of Justice of Canada and the Legal Services Society of B.C. were duly executed on February 23, 1981 and March 20, 1981 respectively.

The research had begun prior to receipt of financial support. Preparatory work to develop detailed plans and to frame the project was completed in December 1980 and January 1981. The working research group began to meet in early January. During January a planning model was employed to map out various phases the research would go through, and a determination was made of the kind of resources and information necessary to complete each phase.

During January and February, the working group made preliminary decisions about the key areas of investigation in the study. These decisions were based on an analysis of the experience of battered women. Interviews and prior Women's Research Centre studies were reviewed (i.e. Battered and Blamed, Intervention in Cases of Wife Assault, and A Review of Munroe House), and a new literature search was initiated. Analysis of the existing data base revealed that, as suspected, the key areas of investigation would be: the police and legal system, the social welfare system, and the health care system. Key intervenors from each system were identified, and a preliminary list of interviews was drawn up.

During March 1981, discussion of various aspects of the primary areas of investigation continued, focussing on the formal versus informal constraints on the responses of intervenors (i.e. legal constraints as opposed to extra-legal constraints such as staffing, local policy, tradition, record-keeping methods, inadequate staff training, etc.).

The legal system was the first area selected for examination. A briefing paper prepared by the project's legal consultant was reviewed, and discussion focussed on the fact that battered women do not appear to be benefiting from those legal remedies that do exist. It was confirmed that, in an important sense, the focus of the work would not be law

reform. Although we anticipated law reform would emerge as a product of the work, the informal constraints affecting the administration of the law would remain our primary focus.

A decision was made at this point to develop, based on a review of the situation regarding protection as it currently exists, a tentative "draft" model or outline of the types of intervention necessary to protect the battered wife, to be used as a basis for interviewing in May and June.

In May, the working group concentrated on developing specific aspects of the model. Background information was collected and presented on three key areas: the police and legal system, the social welfare system, and the health care system. Differences in intervention in different geographical areas of B.C. were considered and the framework of social welfare and health care intervention clarified. Lists of intervenors to interview were finalized.

From May to October the legal model was used as a base for interviews with battered women and several intervenors working in the legal system. During May and June a model was developed for health protection and interviews with health care professionals (in both physical and mental health areas) were completed. A model of the social welfare system as it currently operates was then prepared and interviews with professionals who work in that area were completed in October.

Analysis of the interview data and preliminary drafts of the report was undertaken from September to November. The final draft of the report was prepared in December 1981 and January 1982 and reviewed by project workers in mid-January.

## I.E. METHODOLOGY

### I.E.1 Introduction

The research approach devised for this project was intended to include the various individuals and agencies who participate in the problems and situations concerning battered women. These are: battered women themselves and those who work with them; workers in the legal system, including the police and the judiciary; health care professionals; and Ministry of Human Resources workers. Therefore we conducted interviews with individuals from each of these categories. These interviews form the basis of this report and quotations from them appear throughout. (See appendix I for a complete list of interviews.)

The research was carried out by a team of people, each person working in her own area and responsible for the interviewing and initial analysis of the material itself. The data were then put together by members of the Women's Research Centre in order to provide continuity in presentation and links between the different sections of the report. In this report the pronoun "we" is used to refer to this process and the joint work it produced. The structuring of the research and the definition of the questions for the interviews were also discussed by the group as a whole and interpretations have, in all cases, been checked by those responsible for gathering the initial material.

The work we have undertaken is applied research in that, as far as possible, we have defined the issues, systems and situations under investigation on the basis of acutal experience of them. It is applied research also in the sense that the project is aimed at laying the basis for considering changes that need to be made in the practices and policies of those systems which affect protection for battered women.

Our investigation has been guided by the initial assumption that protection for women who are battered is a right and not simply a situationally defined need. The interests of battered women as they are met or ignored are at the basis of our considerations. The problems that women face as they define their problems and seek aid are also our concern here. The questions asked of the women themselves and of those concerned with responding to their needs were directed towards determining what actually happened in specific situations; how adequately needs were met; and what alternatives can be suggested. People from the various professions

concerned with the problems in different capacities at different times were interviewed with the aim of creating a better understanding of the structure of response to the situations; the kind of aid available; the views of those providing aid; and the relationships between the different agencies and organizations concerned.

The structure of the research reflects to some degree the structure of the situations themselves. There is a great deal of variation in the responses given once aid has been sought. We begin our understanding and presentation of the situation with interviews of battered women. From this point we locate battered women's experiences in relation to the responses and the views and attitudes of police officers and of others who have worked with the police. From there we turn to the legal system and its representatives, and then to the health care professions and workers of the Ministry of Human Resources. In presenting our information in this format we aim to follow the pathways and responses in somewhat the same sequence as the women themselves meet them. We are concerned with presenting the kind of services available, and the attitudes and responses of those giving them and, in the light of that material, we include suggestions for change.

### I.E.2. The interview approach

The interviews were semi-structured, as will be defined below. They were carried out in each situation by interviewers who had direct connections with or interests in the situation, either through service or research. Here we want to outline the interview procedures that were followed and systematized.

The interviews were designed for each situation on the basis of a model of current practice. That is, for each agency or organization involved we defined the sequence of events which would follow the presentation of the problem in the form of a battered woman seeking aid. These models represented a summary of the appropriate responses and of the kinds of service that could be offered on the basis of stipulated policy where it existed, or where it did not.

In general, the absence of clearly-defined policy rules relating to battered women proved a problem, particularly in relation to the health care professions and the Ministry of Human Resources. We recognize the problem in this context to note that the difficulty which

this poses is one of variation in response - which is in itself frequently determined by the attitudes, experience, and knowledge of the person involved. Those making the response often felt that to have too defined or rigid a policy would hamper them in their ability to give aid. (This is a problem that will be discussed in more detail later.) In the case of the responses of the police and the legal profession, there are defined procedures to be followed, but their interpretation and sequencing often proved variable - again based on the particular views and experiences of those responding. Throughout the interviews our concern was to document the variation in the understanding of the situations of battered women, the differing views as to the causes of the problem and, therefore, the differing views of the appropriate responses.

By semi-structured interviews we mean that we defined a framework for asking questions that would allow for the emergence of variations in approaches to the problem. The definition of the rules of current practice in each case allowed us to establish a "base line" from which to ask questions about what actually happens: what the alternatives for response are; how decisions are made; what the workers' attitudes are; what their knowledge of the problem is; what their views are concerning the adequacy of their service; and what their suggestions are for change. This procedure for establishing the initial basis of the interview was followed in all cases in all interviews with legal, health and social welfare professionals.

Battered women themselves were interviewed to set the framework for understanding services on the basis of these women's direct experience of them and the success or failure of those services. In addition, these interviews included the women's suggestions for changes that could be made to improve the services. (For the aide memoire used in interviewing see appendix II ).

Since the central problem at issue is that of protection, members of the legal system were interviewed, and the processes of the court are described in some detail in this report. The aims here are: to define current practice; to determine the extent to which it is understood; to assess the extent of variation in responses and to understand the bases of such variation; and to suggest alternatives. To meet these objectives, and to ensure comparability in response, a model of current legal practice

was designed and a suggested alternative set of procedures drawn up. Both of these models were presented and discussed in all the interviews.

The interviews for this report were conducted by five members of the research team who had knowledge and/or direct work experience relevant to the situations and systems under investigation. For example, battered women were interviewed by women who have worked with battered women - either in organizations such as transition houses or in the Ministry of Human Resources; workers in the legal system were interviewed by a lawyer who had extensive experience in representing battered women in legal processes. Similarly, police, health care and social welfare professionals were interviewed by research team members who had direct connections with or an understanding of those systems, either through research or through their own work situations.

This approach enabled us to gather and present information from interviewees in such a way as to reflect adequately their personal experiences and/or the structure they work for.

Systematization of information was obtained by using models (of current practice and of proposed changes in practice) in the interviews and by regular research team meetings to review interview data and the interview process.

### I.E.3. How the interviews were done

Nine battered women were interviewed about their experience in attempting to obtain protection against further assaults by their husbands. In the interviews women described most extensively (if not exclusively) their experiences with the police and the legal system. In many cases they also provided background information on the battering situations in which they had lived.

A transition house served as an initial base for locating women who would agree to give interviews regarding protection. However, several women, who had not been residents at a transition house or emergency shelter facility, agreed to be interviewed when asked by a social worker who was helping them or by a researcher who was known to them.

Most of the women were contacted by telephone and were interviewed in their own homes or in the interviewer's home. In most cases they talked easily about their extensive experiences in trying to get protection.

Their memories were fresh and vivid - even to remembering specific quotes from conversations they had had. They were not interested, for the most part, in reviewing specific points in the models of current police and legal practice or the proposed changes; but focussed instead on their past experiences. An account of the interviews with battered women is found in chapter two of this report.

The 20 informants from the legal system included police constables as well as informants who have worked closely with the police; prosecutors, from both family court and criminal court; judges from family, provincial, and Supreme Court; as well as family court counsellors and justices of the peace.

Interviews with police officers were obtained after requesting the permission of the chief constable of the Vancouver police department. One officer was known to a researcher through his response to calls at the transition house where she worked. The second officer was recommended by the community relations section of the Vancouver police department as an officer who had had many years of working with "domestic disputes." In addition, we conducted interviews with three other informants who had worked with the police in various capacities. One had been assigned, in a previous job, as a social worker to Car 86 (a program established in the city of Vancouver in 1977 through which a social worker and police constable team respond to "after hours" child abuse and domestic crisis complaints). The second informant, a liaison officer between the police and the Ministry of Human Resources, was recommended to us by an MHR regional manager as a useful source of information on the practices of both the Ministry and the police with regard to battered women. Thirdly, we interviewed a psychologist, who has been involved for several years in developing crisis intervention training programs for police officers, to obtain his perspectives on police practices.

Approximately half of the legal informants were chosen from the family court system, based on our understanding that family court is the arena in which the vast majority of battered women's cases are dealt with. Several informants had had experience in different aspects of the legal system - for example, as a prosecutor before becoming a judge, or as a judge in provincial court before moving to Supreme Court.

Interviews with informants from the legal system invariably occurred

in the informant's office and lasted approximately three hours. Interviews began with the question, "How do battered women come to you?" and the first third of the interview was spent questioning the informant about his/her experience with battered women and in some philosophical discussion of the issue of battering. The next segment of the interview consisted of going over the model of current practice and the last third involved discussion of the proposed model. Very often, the responses to questions would lead to a different ordering, but the interview was always completed by going straight through the proposed model. Therefore, no matter where else proposals for change might have been discussed, the proposed model was covered comprehensively from beginning to end during the last third of the interview. In addition, the discussion of the proposed model would often elicit further responses as to the current practice.

Although the practices of the police and the legal system are a major focus of this research and report, it was clear to us from previous research that both health care professionals and social service professionals can play significant roles in assisting battered women to obtain protection against further assaults. Therefore, in this research project we interviewed professionals from the health care and social welfare systems regarding the current practices and policies of these systems and changes that might be made to ensure more adequate protection.

In the health care field interviews were conducted with eleven informants including physicians; mental health social workers and a clinical psychologist; and public health, psychiatric, obstetric, and emergency room nurses. Generally, the interviews were 60 to 90 minutes in duration and covered the following four basic questions:

1. What has been your experience generally, with the situation of protection for battered women/do you have any comments to make about what you know to be the situation for battered women?
2. Is your view held by others in your profession?
3. What are the policies/practices in your workplace regarding battered women?
4. Is there anything different about policies/practices regarding battered women in other parts of your discipline that you know about?

The models of current and proposed practice for both the legal and health areas were then presented. Since the informants were health practitioners

they had much more to say about the health model, so that model was presented last - allowing for conversation to be longer if necessary. The interviews were closed by the interviewer asking informants if they had any final comments to make on this issue. In addition, several informants have expertise in the areas of sexual abuse of children, public health of children, counselling for male batterers, et cetera, and were asked if there were any insights or knowledge from those areas of expertise that should be taken into account in this project.

In the social services field, a total of 11 employees of the B.C. Ministry of Human Resources were interviewed. The informants were representative of workers in a position to assist battered women. They included a regional manager, district supervisors, social workers, family support workers, and financial aid workers.

Interviews were arranged by telephone and generally held in MHR offices for a duration of one hour. All those interviewed expressed a concern that they not be identified or seen to be speaking officially for the Ministry.

Interviewees were selected on the grounds that they were well-informed and experienced in their jobs. Most were sympathetic and responsive to the plight of battered women. However, all but one felt their views to be atypical in terms of their colleagues in the Ministry.

The aide memoire was used as a general guide in the interview, and from there more specific questions were asked related to the financial aid and social work areas respectively.

Finally, in addition to the research done in Vancouver, we also included a smaller community from the Fraser Valley. The aim in doing so was to extend the basis for our understanding of the problems of protection in areas with different levels or types of services. In conducting these interviews the aim was to add information and to note similarities and differences in problems and procedures in relation to battered women seeking protection.

It is important to note here some of the characteristics of the smaller community that affect women when they seek protection and assistance, and some of the bases for differences between a smaller community and a larger urban centre like Vancouver.

In a small community, our researchers found that the agencies people

work for tend to be less important in some respects than the reputation of the worker. To a much greater extent than is possible in the city, people refer clients to other people, rather than to other agencies. Professionals tend to know each other, at least by reputation, and some people are known to be interested in or experienced with a particular issue. Sometimes their interests do not coincide exactly with the mandate of the agency they work for. A couple of people interviewed, for example, identified a psychiatric social worker formerly at the hospital as a good counsellor for battered women, and said they referred to this worker accordingly. They did so in spite of the availability of other counselling and the procedural complications involved in referring to a hospital worker.

Occasionally someone would mention in an interview that there was something they knew about the personal life of another professional, or something that had happened to her/his client that would prevent them from referring to that professional again. Because the community of professionals can be closely knit in a small town, the pattern of referrals often depended on factors aside from or in addition to people's perception of the function of the agency referred to.

The Fraser Valley area was one of the first Mennonite gathering places in B.C. and remains a place where many schools and organizations are based. The area is primarily agricultural, rather than industrial, and many families have lived in the area for generations. It has a stable population base, despite an influx of newcomers in recent years from the lower mainland and elsewhere. The economic base is sufficiently diversified that people are not all engaged in the same kind of economic activity. Seasonal work in the agricultural or logging industry is not uncommon. There are 24 Indian Bands in the area. The community is old - one of the oldest in the province, and services are well established (unlike, for example, services in a new town created primarily to service a mill or processing plant). Services are more accessible - despite the drive to get to them - than in a town where the nearest office is one hundred miles away, or accessible only by air or water. Finally, over the past several years, a small group of women has been organizing various support services for battered women.

Each interview of Fraser Valley informants was conducted with an aide memoire, or interview guide. This guide functioned as a reminder of

the topics that should be covered. In general, each person was asked about the following: the current practice in their profession when dealing with a case of battering; their perception of the nature of the problem; changes they would like to see; their views of the two legal models; and their views of the current practice and proposed model for the system they worked in. Interviews were otherwise unstructured, allowing the person interviewed to introduce topics that s/he felt were important. The shortest interview lasted two hours; the longest close to five hours.

Most of these interviews were set up by telephone. In most cases, a person we had already interviewed would have been in touch with someone not yet interviewed, and would have described to them the research being done. Consequently, most people we contacted were waiting for a call, and simply agreed to be an informant without needing a written description prior to the actual interview. In two cases, people were contacted by letter and later by phone. In one case, a description of the research project was mailed to an informant to be shown to a superior for permission to conduct an interview during working hours. Each person was given a written description of the research before the interview began, and asked to read it.

All of the interviews conducted for this research are confidential. This was of particular concern to some informants while others indicated that confidentiality was of no consequence. As noted in the written description of the project which was made available to informants, some of the professionals who were interviewed may identify themselves through their comments or positions. As far as possible we have endeavoured to protect, even in those cases, all informants' confidentiality.

With one exception, everyone from whom we requested an interview complied.

### I.E.4. Summary of methodology

The aim of the methodology section of this report has been to present the framework within which the research was carried out and to clarify the basis for selecting informants, agencies and organizations. In each case the decisions as to whom to interview were made collectively, through discussion, and the questions to be asked were decided by the

group as a whole. Interviews were carried out given this agreement, and guided by the aide memoire. All informants were asked to comment on the legal models - both the current practice and the proposed model of protection. The results were then linked and coordinated. What follows, therefore, is an account based on the interviews and an analysis based on our interpretation of that material, given the assumptions that battered women need protection, and that current practices are inadequate.

## I.F. GUIDE TO THE REPORT

What we present in this report are first-hand accounts from battered women of their experiences with the police and legal system when they seek protection. In addition, we provide an account of how professionals from systems such as the legal, health care and social welfare systems respond to women's requests for aid. We present accounts of the character of that aid by the professionals themselves, their assessment of the services they provide, and their views of their responsibilities. As far as possible in this report, informants' views are provided in the form of direct quotes from the interviews.

In presenting the material in this format we have aimed at reflecting systematically what happens when battered women seek aid, and at defining the difficulties which emerge in relation to it. Chapter six discusses some of the major issues emerging from this research, and offers suggestions for action and change in specific areas.

Details of the situations of battered women in terms of case histories are not presented here. In this report we present only what happens when they seek aid. For the details of the battering situations themselves, case histories (i.e. specific descriptions of the problem situations) can be found in our previous studies Battered and Blamed, A Perspective on Intervention in Cases of Wife Assault, and A Review of Munroe House. It was this work that initially suggested to us the urgent need for new methods of providing protection and the limitations of what is currently available.

It is our hope that this report will be useful to battered women, to those who work with them, and to individuals and organizations in a position to contribute to the provision of protection for battered women.

## CHAPTER TWO

## BATTERED WOMEN SEEKING PROTECTION

"A WOMEN DOES NOT DESERVE TO BE BEATEN, NO MATTER WHAT SHE DOES. NOBODY DESERVES BEATING, EVER."

(Gillian Walker, Grounding Assumptions About Violence in the Family, from Pilot Project for a women's support group programme, reprint sheet from Battered Women's Support Services, 1981)

## CHAPTER TWO - BATTERED WOMEN SEEKING PROTECTION

### II.A. INTRODUCTION

In this section we will focus on reports of what women have experienced when they have sought protection from the police and through the legal system. In order to understand their problems and to incorporate their experience into our presentation of the issue of protection, we interviewed women whom we knew had encountered difficulties. These women testify to a variety of recurrent problems.

The incidents that these cases document mirror attitudes and barriers that many battered women face. The women interviewed were those who had shown determination in the face of the difficulties presented by the legal system, which is perhaps why they responded so positively to the proposed model of protection. They have sought protection from the police and through the legal system and in both instances have found the current responses wanting in terms of sympathy and follow-through.

It is important to note that at the same time as many women seek protection for themselves, they also remain concerned about the husbands who have abused them. For them an abusive husband is frequently seen as being very much like a small child: He gets easily and irrationally frustrated and vents these frustrations on those around him. The women's search for protection from further assaults by their husbands is often accompanied by this understanding and caring.

In some cases, women are also balancing their fear of their husbands' retribution against the need to get help for themselves. However, women's expressions of these feelings to police officers and/or legal officials to whom they turn for assistance often seem to be misinterpreted. As we see later in this report, the people from whom battered women seek help tend to overemphasize or encourage women's understanding and concern for their husbands to the exclusion, or at least the minimization, of the women's need and desire to be protected from violence. Some confusion on the part of the police officers, legal officals, et cetera, is understandable in that a battered woman may be making superficially contradictory requests: i.e. protection from her husband's violence coupled with genuine concern for him and/or with fear of the consequences of seeking protection for herself. However, the cases documented here show clearly that the need

for protection is real and immediate.

In presenting these examples we will document the sequence of events that are involved in seeking protection and the responses that the women interviewed received when they turned to the police and the legal system.

Because the focus of this study is protection, we have in these interviews located our questions and informants specifically in relation to protection as an issue. In their interviews women focussed primarily on describing their experiences in seeking assistance from the police and from the legal system - perhaps because these are the first sources of help that women explored. Accordingly, we have focussed in this chapter on the responses, structures, and links between battered women and the police, and other parts of the legal system. Health care professionals and social workers also frequently come into contact with battered women, and certainly have a role to play in facilitating protection. In chapters four and five of this report, we do describe and document that role.

In presenting the experience of women seeking protection we follow the sequence of events in the following way. We begin with women "calling the police." This is followed by an account of what is involved when women seek to lay charges. We then present issues concerned with court proceedings and with the problems of sentencing and enforcement. And, lastly, we consider some of the issues relating to batterers' access to children, where the police and legal system are also involved.

## II.B. THE STEPS BATTERED WOMEN TAKE TO FIND PROTECTION

### II.B.1. Calling the police

When a battered woman decides to seek protection, it is often the police she calls first. The police attended in seven out of nine cases of women interviewed. Informants' accounts reveal a variety of responses from the police. Many women said they had felt a lack of interest on the part of the police, which had indicated to them that the police did not take their situations very seriously. One woman described calling the police after a particularly vicious beating in which she lost consciousness twice and was raped. She was told by the police to come to the police station. As she said, she was "in no condition to drive." Another woman reported the police told her they were too busy to help her. A neighbour who came to her assistance knew the police socially, however, and phoned again. They responded in five minutes: "They told me they were busy, but they told C they weren't doing anything." One woman had the police come to her home when her husband was threatening her. When they arrived they said "they couldn't come in without the agreement of both parties." However, the officers did agree to enter the house to witness some papers her husband said she had to sign before she could leave. These were papers agreeing to her dropping divorce actions, and giving up claim to the children and the house.

Often the action police do take is ineffective in terms of the actual protection it offers to the battered women. In one case, a woman said the police used to come when she phoned, take her husband away and tell him not to come back. She described the effects of police response:

> When they tell him to go and he comes back half an hour later - through the window or whatever - when he gets in there was no way. I couldn't phone anyone - he would beat me up again and keep me up all night arguing. He would be more angry because I called the police.

The inconsistency of police response is illustrated by two examples women provided. When the police came to one woman's house they arrested her husband and took away his guns. One of the officers took a special interest in trying to prevent her husband from getting guns again. However, another woman reported, "They said they couldn't take a man from his own home, although they do it often enough for other things."

A common concern expressed by battered women regarding police response to their requests for help focusses on police inaction. In many cases police officers were reported to have said they "couldn't do anything" to help. One woman described calling the police after she had been almost suffocated by her husband. She had been living apart from him and in fact had not seen him for two years. When the police arrived at her home she remembers they said:

> 'You are still married to him. He is your husband. There is nothing we can do.' They told me to lay charges. I got hot with them and said, 'So tonight he can come back and kill me. Then what?' They said again, 'He is your husband, you have no separation papers or restraining orders. There is nothing we can do.'

This woman acknowledged the difficulty police officers may have in deciding whether it is the husband or wife in such a situation who is giving an accurate account, but she also raised a critical question that must be addressed by police:

> After, they admitted they didn't know the truth in situations like this when two people tell such different stories. I understood the difficulty here but still was afraid I was going to be killed. Is your husband allowed to kill you because he is your husband?

The responsibility of the police in such cases is to protect people from being hurt and to uphold the law. The Canadian Criminal Code's assault provisions do not exempt husbands from coverage under the law. But varying interpretations of the law have influenced police practice in responding to battered women, as we shall see in chapter three of this report.

Short of arresting the batterer, police have several options open to them - including referrals to social service agencies. However, many women we interviewed said that police have responded to their calls, come to their homes and left after simply talking to their husbands. The police did not refer the woman to a transition house or social service agency. In many cases the abuse started again when the police had left. Only one woman interviewed mentioned the police suggesting community services to her. In this case the Vancouver city police called Car 86, a car staffed with a police officer and social worker. This team came and helped the woman relocate for the night.

In summary, battered women's accounts of their experiences in seeking protection from the police indicate that the police response was unsatisfactory. In some cases, police did not demonstrate concern for what was, to the woman involved, a very serious situation. In other cases - including several in which the woman's life had been endangered - when the police did respond, the action they took was ineffective and/or inconsistent. And a recurring difficulty for battered women who need protection is the view held by some police officers that there is nothing they can do. Whatever the different causes of or explanations for these problems, the result is the same: battered women remain at risk.

II.B.2. Laying charges

Most of the battered women interviewed had laid assault charges. This is not an easy step, as the following incidents will illustrate. These women were not encouraged or supported in laying charges.

The procedure for laying charges is complicated and confusing to a layperson. For example,there is the confusion about whether the charge is to be laid at family court or criminal court. However, the biggest hurdle seems to be the attitude of the people the woman must deal with. If those people do not have an understanding of wife battering and the dynamics of the relationship, it is clear from our informants that they often have very little sympathy for or understanding of the victim. The fact that many women may drop charges and return to their husbands leaves many officials feeling frustrated and cynical towards the women. A proper understanding of wife battering could help reduce this frustration. It is clear from research on the issue that leaving a relationship is not an easy task. It is more difficult for women who have been made to feel guilty and responsible for the breakdown in the marriage. One consequence of an uninformed or unsympathetic response is that this guilt is compounded.

Transition house workers and others who work with battered women explain that every time a woman leaves a battering relationship it is a positive step. If she goes back, she will still have gained some confidence and perhaps the strength to leave again, provided she has received cooperation and support from any agency she has had contact with. Attitudes of hostility and cynicism can directly contribute to a woman feeling defeated, and increase the possibility of her returning to a

dangerous situation.

A cynical attitude on the part of police is often encountered by women who want to lay assault charges against their husbands. One woman recalled what a police officer had said to her, and how she'd felt:

> 'You're not wasting my time are you? Don't phone up tomorrow and drop the charges.' I felt like I was guilty of something.

A casual attitude can make a battered woman feel her concern is being dismissed. One woman described the problem:

> When I started telling the police my story they could tell I was in bad shape emotionally, but they were not taking me too seriously because I had no bruises.

Considering the obstacles they must overcome, the tenacity that battered women show when trying to lay charges is amazing. After her husband attempted to suffocate her, one woman went through a confusing maze of action and advice before charges were laid. Her story is an example of the confusion among legal professionals as to what charges can be laid, and where. The following example is quoted at length for this reason. It shows clearly some of the obstacles that stand in the way of women who seek to lay charges, the significance of the particular interpretations by officials at the time, and the role of the police in establishing what violence means. It also shows some of the ways in which the problems women face are belittled by the interpretations of the police and legal officials upon whose judgements the women depend:

> On Saturday [the next day] I went down to Main Street [to the J.P.'s office] and they said to come back the next day as they had no police reports yet. I told them I had the police report case number but they said they couldn't do anything without the report.
>
> On Sunday I called the J.P.'s office and got a helpful woman J.P. who told me not to come down but to go straight to the crown counsel on Monday morning - because of the seriousness of the charge. On Monday, I went to the crown counsel and he told me that my charge would have to be laid in family court because the man was my husband. He said it would only be a charge of minor assault.
>
> We waited an hour and then got in to see a family court counsellor. I told her what

> happened as she wrote it up for the justice of the peace. Then she got the police report that had arrived and gave this with her information to the J.P. He interviewed me and the social worker, and again I went through what had happened. I told him I was frightened and wanted a restraining order against my husband. The J.P. had read the police report and he said that 'the police didn't view this as a very serious incident.' The social worker asked him what he meant and he said, in their opinion (written at the end of their report), they had said it seemed like an incident between a jealous husband and his wife who now had a boyfriend. Of course the husband would be jealous and upset - or words close to this.
>
> The justice of the peace had me swear out two informations and had a warrant for my husband's arrest drawn up. He explained how serious the charges of assault and threatening were, and said my husband would be put in jail, then let out on bail and then we would have a court hearing. I said I was worried about getting hurt by my husband, especially if he was arrested and then let out. He said that 'usually a no contact order is made in such cases' but couldn't guarantee this in my case. He said he would try and notify me if my husband was picked up.

It took this woman four days of following the instructions of legal professionals before she could lay a charge against a man who had attempted to murder her.

In the next example the woman was not able to lay a charge - supposedly the direct route to protection. She was given a seven-day "cooling off period." The idea behind this seems to be that many women will drop the charges anyway and this procedure will weed out the ones who are not serious. In actuality, it effectively determines who will be beaten up again. This procedure discourages women who have sufficient courage to lay a charge. Many women are discouraged by such lengthy delaying tactics. This woman's account also speaks to the consequences of inaction in terms of further assaults and deterioration of a marriage. The sequence of events in this case was as follows:

> Then another friend told me about going to the police station to lay a charge. Then the police would help me. I did this after a bad beating and a nice constable talked with him [the husband] and took a report from me. He asked me if I was sure I wanted to press charges and I said 'yes.'

He then gave me a card with his name and a case number on it and told me to come back in seven days if I really wanted to lay a charge. I went back on the day and time written on this card and was told he wasn't in. They told me to come back that evening, which I did, but he still wasn't in. Even though I had the case number I was told that nobody but he could help me. I left a message asking him to call me and never heard from him. A friend told my husband that I had been to the police so he better be nice to me. I think he was frightened and for two months nothing happened.

Last week he beat me again and his girl friend at her home. I went right to the police station and the constable talked to me for two hours about laying a charge. Did I really want to do this? I might lose, he said, and then I might have to pay court costs. He frightened me and I didn't know what to do. I went to my sister-in-law's and talked to my family and they all advised me to go ahead. I never changed my mind about charges before, so why was he trying to talk me out of laying these? I asked him what happened with my first complaint and he said he didn't know. I would have to talk to the policeman who had taken that report. He kept asking and asking if I wanted to pursue this. Finally he said, 'Okay, if you really want to lay a charge, I'll take it. It's late and I want to go home,' He had spent the whole time talking me out of it and saying what a hard time I would have convincing the judge of my side of things.

He advised me to leave my husband, go to a lawyer, get welfare and get myself together, but not to keep coming to the police station if I get hit. Then he gave me a card with his name and the case number on it and told me to come back in seven days and tell him if I wanted to press charges. I went back to the police station yesterday morning, the date and time on the card, and he wasn't there. I was told to come back that night. He wasn't there again, and again I was told by the policeman there, 'It's not my case. You have to come back and ask for the constable who helped you that night.' He told me to come back again in seven days. But now I have a lawyer so maybe something will happen. I want a divorce. But maybe if the police had come a long time ago, my husband would have learned that he couldn't keep beating me. He was afraid of the police but then nothing happened.

The systematic invalidation of women's needs and requests for protection are well illustrated by this case.

If the desire to lay a charge is not seen as being in and of itself sufficient grounds for recognizing a serious situation, what would be acceptable indicators of the existence of a serious problem? The following case illustrates the difficulties involved in answering such a question and again shows how influential "on the spot" reactions and judgements by officials are. It also suggests that women themselves benefit if they have status, or resources on which they may call. As a basis for ensuring that protection is given, this is clearly highly problematic.

In this case even the presence of blood was not immediately recognized as an indication of severe injury. A woman's wound, which the constable saw, was not noted, and her charge not considered seriously. She was able to get a charge of attempted murder against her husband only because as a professional woman she was able to put pressure on her connections. In the absence of this factor, it is likely she would have only been able to charge her husband with common assault:

> I went to the police. When I got there I had blood running out of my elbow like you wouldn't believe. When I said what my business was, they said a constable would see me in a few minutes. Then they said,'The constable is talking to your husband on the phone.'
>
> Eventually I got in to see this constable who was actually quite condescending. He said, 'Oh, calm down' and that I was upset over nothing. My husband had guaranteed to him that he would take my daughter to the doctor in Vancouver - so wasn't I lucky because I had another whole day to myself without the kids and to go home and enjoy myself. In September, when I inquired with the crown counsel about the assault charge he said, 'Nothing happened, there were no injuries so the charge has gone to the bottom of the pile - it is not serious or important.' He said there had been no injury noted on the police report.

When a woman wants to receive protection, her requests can be met with confusion and stalling. One woman we interviewed had been tied up and raped; she had lost consciousness twice. This is her report:

> I was amazed that the police report was so short. They told me to go to family court. My lawyer refused. They said, 'Go downstairs then.' X was at the desk downstairs; he wouldn't accept

> the charge, he said there was no proof. I had on a turtleneck sweater - typical for a battered woman, hiding the marks. Nothing was done. I went to family court; they said get a doctor's report. Then back to family court, saw a counsellor who said; 'Why are you seeing me? You should see the J.P.'

However, once this woman saw the family court counsellor, it took only half an hour to lay a charge of breach of a restraining order. She went to stay at a transition house, and workers there advised her to go back to the police and have pictures taken of her injuries. The police, after discussion with her, decided the case looked like attempted murder. They put her through a polygraph test, then sent her to the crown prosecutor. The woman describes this interview:

> She asked me questions like, 'He's done this to you before, why is this time different?' My point is he came clear enough in it [the battering] to realize I was unconscious. He decided not to kill me. Two times he took my neck, the second time I thought I was dead. He made the choice not to kill me. The prosecutor and I had a big fight. I was scared to death...I was irate...I had to defend myself. There were marks on my neck, I'd taken a polygraph - why did I have to defend myself?

Eventually, the police themselves laid the charge against this woman's husband. Many other women have been through a similar ordeal and their husbands have only been charged with common assault. Nonetheless, it is worth noting that the initial response to the request for protection was not a positive one.

In this case the woman also suffered the inference that she liked being beaten. Many women have been made to feel they deserve to be beaten; however, research shows they do <u>not</u> like being beaten. Many are afraid of the beatings, and many are resigned to them - being trapped emotionally, socially and economically in their marriages - but women do not like to be beaten. Nonetheless, it is still common practice to cite some women's reluctance to lay charges as support for widely-held myths about wife battering, such as this one: If women wanted to do something to stop the battering, they could. Our informants' accounts illustrate the pressures women must contend with when they try to take action to protect themselves from further assaults.

Two of the women we interviewed had initially dropped assault charges against their husbands, and explained why. One said, "I had phoned and they [the police] told me he would be let out anyhow, so I thought I'd better drop them." Another said, "He threatened me - to kill me and burn the house down [three kids with her]." As well, there is often pressure from friends and relatives to drop charges:

> There's so much pressure on me, people say 'It's gone far enough, he's going to be found innocent.' I wanted him to get psychological help, I don't want him to go to jail...and you know, to my kids I'm a liar, he didn't do any of this. I did well in court, the truth is the truth.
> Everyone is waiting for me to drop the charges, the police and prosecutor have all said he won't be found guilty.

As noted before, leaving a relationship is not easy and many women do drop the charges and go back. They have tremendous pressure on them to return. Research shows there are many promises that the husbands make: never to drink again, to go to A.A.; to go to counselling groups; to go to a marriage counsellor; to stop being out all the time, and so on. A woman may understandably want to give the man another chance if he seems sincere and the relationship is a very important part of their lives. She may believe that children need two parents. Relatives and in-laws plead with her to try again. And most powerful of all, there are the threats - of killing and torturing the woman, of hounding her for the rest of her life, of driving her insane, of kidnapping the children. These are real arguments against pressing on with the charges, especially if the protection offered by the legal system is not as real as the threats from the husband.

### II.B.3. Going to court

When a battered woman does lay charges against her husband, it may be a long time before there is any court action. In the meantime the woman lives in terror of another beating, or of the kidnapping of her children. She must often hide away, unable to live in her own home. One woman described such a situation:

> The social worker asked if the warrant would go into effect immediately and he [the J.P.] told us that as tomorrow was a holiday, it wouldn't get to the police station until the day after

> that. If, however, we could deliver the information and warrant to the Public Safety Building, then it would go into effect right away. We did this. It is two weeks now; my husband has been seen around my place twice, but hasn't been arrested. My mother is staying with me in my apartment and I am still frightened being there and on the streets around my place. But he is not going to get me!

Women have a frustrating and frightening time because of the lengthy delays in getting to court. One woman waited from January until September to get final court action. In the meantime her husband was harassing and threatening her even though she had a restraining order. She described him driving around her house, parking in front of the house at night, sending threatening letters, and using friends to send threatening messages. She had her phone number changed. This woman was told by family court to ignore the harassment unless he broke into the house.

The length of time that the charge takes to come to court also inevitably diminishes the impact of evidence. One woman said she first went to court six months after the charge was laid, only to have the trial adjourned to three months later, and delayed again another four months. She suspected her husband's lawyer was stalling so that the charge would be dismissed. When the case was finally heard she said:

> Apparently, with a peace bond, you have to show that on the day you are in court, you are in fear for your life from another person, and because he [the husband] had not physically assaulted me since September 1st or verbally threatened me, I couldn't show I am in fear. How can I tell them that I never know when he is going to lose his cool again and come back?

## II.B.4. Sentencing and dealing with breaches of court orders

The women who do get to court receive restraining orders or peace bonds. Of all the women who did get these orders, including interim orders, in all but one case the orders were broken. Even in the exceptional case the woman's husband was able to contact her as a result of an order for access to the children.

When the orders were broken there were a variety of responses from the law. One woman tried family court. Another tried to report the breach

to her husband's probation officer only to find out he didn't have one - even though he had been put on probation for one year. Another woman finally got swift action because the police not only responded to her call but also waited at the scene:

> I'd go back home when he was not there, but I'd bring somebody home. I finally got my peace bond and got tired of bumming around and I went home and he was home and I ran next door and called the cops. The cops came and he hid and they said, 'Call us back when he comes back.' I didn't know they were parked out in front and I was phoning Transition House, and I hung up, and was phoning my friends and he just appeared. I ran to the front door and he grabbed me by the waist but I really screamed my head off and the cops came rushing in and they put him in jail.

In other cases women have found that calling the police seems futile. One woman, who had a separation and a court order to prohibit her husband from entering the home, recounted repeated instances when he would simply start to move back in. Each time that she called police, they would put him in jail overnight until he eventually said, "You call the police one more time and see what happens." She talked with a police officer:

> He told us that restraining orders and legal separations and court orders were not worth the paper they were written on. The courts won't enforce them. They could arrest a man for breaking and entering into his ex-wife's home, and when they get to court the charge will be dismissed because she was still his wife. I think this is why the police are so lackadaisical - it isn't followed up when it gets to court.

The attitude that wife battering is not a serious offence clearly carried over to sentencing and enforcement - and this may well be the reason why restraining orders simply do not work in so many cases. As well, our informants suggest there is often a feeling of vindication on the part of the battering men who receive virtually no punishment for assaulting their wives.

When assault charges do come to court, the sentences are often very light. A man who had broken a peace bond and was charged with assault was told not to see his wife and the children for one year. Another man was

charged three times, the first time for assault and possession of a dangerous weapon. He was given a $100 fine and no restraining order. The second time he was charged with possession of a firearm - but the case was thrown out:

> There was one policeman who was at the scene who felt he [the husband] was unresponsible and shouldn't have a firearm. So he applied to whoever, got the thing from the sheriff's office against him [the husband] having a firearm. The judge threw the case out of court and he got his gun back! He [the husband] went back to the police station and applied for a permit to carry a handgun and he got it!

On the third incident he broke the woman's nose and left her with bruises from where he picked her up by the flesh on her neck. He was fined $100 and put on probation for one year.

Another man was ordered to be treated for his alcoholism:

> [He] was in Miracle Valley [a treatment centre] - 1978 or 1979, I think - he ran away. We were both supposed to go to court - he ran away to escape going to court. They let him get away with it - he wasn't called back or charged. I was never in court with him. The one time I was there he had run away. They told me to keep calling the police. After this, when he came back, he was supposed to go [to see a probation officer] once a month. He only went twice.

These sentences are hardly punishment for someone who has caused so much pain and suffering. They are more likely indications to the man that he can get away with what he has done. They are clearly sentences that do not give much thought to preventing a repetition of the crime. Further, they indicate to battered women that their safety is not a priority.

### II.B.5. Contending with the husband's access to the children

A woman who succeeds in obtaining a restraining order, and maintenance or custody orders if she has children, must still deal with the "access order." Husbands who have been found to be guilty of assault against their wives are nevertheless considered in many cases to be capable of being good parents. However, these men's visits with their children are often used as a way to continue to harass and abuse the

wives. They are also an opportunity for the husband to pressure and plead with his wife to return to the relationship, as the following example shows. This case also illustrated the difficulties some women have encountered in arranging for supervised access:

> I got custody and a restraining order quickly, but on the condition that he have immediate access. I didn't like that at all. The lawyer said I didn't need to go to court, and after she came back with the conditions of immediate access, I was worried that he would take [the child] - be drinking or on pills, and he would take [the child]. He said I would never have [the child], and if I did take her I would be killed for doing it. We had to have someone supervise and he was supposed to find someone. I didn't like the idea of him finding someone - so I phoned family court, social workers - oh god, whoever I could think of. We couldn't find anyone we could agree with each other about. So I assume the lawyer found someone to supervise the visit.
>
> I had to take [the child] to the visits 15 minutes earlier, leave, and then when I came back the supervisor would bring [the child] to me. One day I went to pick up [the child] and they said he [the husband] would be gone, but he was still there, and I had to ask him for her things. And then he was talking to me, telling me how much he loved me and didn't want a divorce et cetera.

Another woman was assaulted when her husband came to visit on the birthday of one of the children. She was again assaulted when she went to get her children after her husband was eight hours late in bringing them home from a four day trip. The police would not assist her in picking them up:

> They [the police] said that they can only assist when there is a court order for custody. I came up against this again in March [an incident when her husband and her children disappeared for 10 days]. How could I get a court order when he keeps changing the court date? So I went over by myself, I knocked on the door and he wouldn't give me the kids.

Another woman said she never knew when her husband was coming for the children as he would change his plans all the time. She reported he would say he wanted them for a week, but then keep them for only three

days. In the time he had them, he also refused to take the children to their regular activities (such as pre-school). This woman threatened legal action and then actually went to court to get an order for specified access in an effort to make her husband deal more responsibly with his children.

Access is clearly a way for the husband to continue to harass his wife. However, the courts apparently operate on the assumption that because a man fathers a child, he has a right to see that child, even though he has assaulted and/or verbally abused the child's mother. It is important to consider protection for the mother in making decisions in such cases. Furthermore, the children's welfare may be jeopardized by basing access decisions on the narrow assumption of a father's right to access. Many batterers only want to see the child to get at the mother, and the courts are putting these children through unneeded stress and abuse when access is granted. Many of these fathers spend much of the visits questioning the children about where the mother is, who she is sleeping with, what the name is of that person; or beseeching the child to "get Mommy to come home," et cetera. They may also be only interested in the children when they pick them up and bring them back - leaving the kids with relatives the rest of the time. Furthermore, batterers have used the occasion of picking up or returning their children to pressure or harass their wives and even to beat or rape them.

## II.C. BATTERED WOMEN'S COMMENTS ON THE PROPOSED PROTECTION MODEL

From the interviews we can see that women are often not supported in laying charges against their battering husbands. When they do lay charges, the consequences of breaking the orders are not serious enough to deter the man. As a result, the women are forced to live in fear, even though they have taken the proper steps to protect themselves.

When asked to comment on the model of current legal practice the women had various reactions. One woman said her husband "gets fun out of breaking rules, especially if there are no consequences. A court order wasn't a thing to worry about." Women talked about how frightening and difficult it was to lay a charge. One woman said the difficulty in having a charge laid and the delay in consequences for her husband added up to no protection for her. She felt helpless. Had there been police consequences immediately, she felt her husband might have learned that battering was serious, and that he might have stopped. Other women talked about how confusing the current legal practices in battering are, and how exhausted and depressed they were after their experience in court.

In light of battered women's accounts of the current system of obtaining protection, it is not surprising that all of the women interviewed for this study approved of the proposed model of legal protection. Their comments were constructive and positive. They began by supporting immediate police action and encouraging mandatory training "for police to hear when and how a woman got battered." Others called for more courtesy in police stations and family court/J.P.'s offices, saying, "You have to sit out front in the open, no coffee, nothing."

The idea of a central registry was thought to be useful. The women believed it would help the police in their handling of the call. And as one woman said, "My husband already has one divorce for assault. If this was on the central registry I could use this in court."

Generally, the women agreed that mandatory arrest of the batterer by the police would take the onus off the woman. However, one woman said, "He would be angry when he got out," and any protection for her would depend on how long he was kept in. She said, "The most positive factor would be that women would have a chance to think, to move out if they want to." Another woman said mandatory arrest of the batterer by police would mean "even if people went back together and the case came up [for trial]

a year later, he would still have to answer for the charge." She saw this as being positive.

Two women commented on the deterrent value of the model. One woman said, "When he was in jail for two or three days, and he realized he didn't want to be there, then he wouldn't do anything to be there again." Another woman summed up the present situation by saying, "Nothing deterred [the husband] because nothing was there."

There was agreement on having wife battering charges heard in criminal court rather than having them directed to family court. As one women said, "It is not a family matter, not a marital dispute."

The reality of the fear battered women feel about their husbands showed clearly as they responded to the parts of the model recommending imprisonment of the batterer on a second offence or when bail terms were broken. Some said they would still have to move, and would have to "not be around when he got out." One woman said, "He told me he would send someone out from jail to get me" but added that she "would put him there anyway." Another woman said she would be afraid if her husband was imprisoned: "Why do you think I never did anything for all these years? If I put him in jail for 30 days he'd kill me."

Most women said psychological help or mandatory counselling for the batterer should either go along with the prison sentence, or occur first. If the counselling didn't work, "then go to jail and you'll have something to think about while your're there."

Some women added comments on the difficulty of allowing battering husbands to have access to their children, saying it would depend on the children's ages and whether or not they wanted to see their father. One woman said, "If it means you are going to get beaten up - no access," and pointed out that sometimes "kids get beaten too, or get a lot of verbal abuse."

## II.D. SUMMARY

Battered women have a great deal of justified fear of their husbands. These husbands are not people who just happened to attack them on the street, but are men who often have deep and long-term attachments to these women. This makes protection even more imperative and more difficult. This attachment seems to be used by the courts as a justification for more lenient sentencing. But courts must recognize it as a dangerous condition. The law must be responsive to the woman and firmly enforce protection. Law enforcement could have the effect of changing men's violent behaviour towards women.

It is very important that the battered woman's experience be taken seriously and be believed. Workers in the legal system must recognize that wife battering is common and that it is against the law. Their job is to see that the law is executed as effectively as possible. When a woman comes to lay a charge, for example, she should be treated seriously as a citizen of this country who has been assaulted.

Every positive experience a woman has with the legal system increases her chances of being protected and of escaping the battering situation. If workers in the system understand this basic point, and reflect it in their practices, battered women would be able to obtain much needed support, and obviously - more protection.

# CHAPTER THREE

## LEGAL PROTECTION FOR BATTERED WOMEN

"BY TAKING A FIRM STAND THAT BATTERING IS A CRIME WHICH WILL BE PUNISHED, PROSECUTORS CAN PROVIDE VICTIMS WITH AN ENFORCEABLE RIGHT NOT TO BE BEATEN, AND COMMUNICATE TO ABUSERS THAT FAMILY VIOLENCE WILL NO LONGER BE TREATED AS A PRIVATE MATTER."

(Lisa G. Lerman, Prosecution of spouse abuse: innovations in criminal justice response, Centre for Women Policy Studies, 1981, p.147)

## CHAPTER THREE - LEGAL PROTECTION FOR BATTERED WOMEN

### III.A. INTRODUCTION

In order to put a discussion of legal protection for battered women into perspective, it is important to remember that in our society no one has the "right" to beat anyone. Section 244 of the Criminal Code of Canada states:

> A person commits an assault when:
>
> (a) without the consent of another person or with consent, where it is obtained by fraud, he applies force intentionally to the person of the other, directly or indirectly;
>
> (b) he attempts or threatens, by an act or gesture, to apply force to the person of the other, if he has or causes the other to believe upon reasonable grounds that he has present ability to effect his purpose; or
>
> (c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person and begs.

And Section 245 tells us:

> (1) Every one who commits a common assault is guilty of an offence punishable on summary conviction.
>
> (2) Every one who unlawfully causes bodily harm to any person or commits an assault that causes bodily harm to any person:
>
> (a) is guilty of an indictable offence and is liable to imprisonment for five year; or
>
> (b) is guilty of an offence punishable on summary conviction.

The law does not modify this statement relative to the relationship of the actors in an assault. When a man beats his wife he is committing a crime. However, in the legal system there are many levels at which the law, as stated in the Criminal Code, is interpreted and translated: The law is not applied simply as it is written.

In this chapter on the legal system, we see that all groups, from front-line workers, such as police dispatchers and constables, through to the final arbitors of justice, such as family and criminal court judges, apply discretion to interpret the law. Their views are often in conflict, resulting in serious consequences for those battered women who seek protection under the law. Furthermore, the amount of discretion allowed

in interpreting the law has affected the development, over time, of the practices and policies that influence how workers in the legal system do their jobs.

In this chapter we analyze methods of providing protection for battered women at all levels of the legal system.* The chapter is divided into three major sections. The first section, entitled Current practice, begins with a description of the derivation of the model of current legal practice. Then, using this model as a guide, and based on information gathered during interviews with informants, there follows a description of present policies, practices and procedures used by various parts of the criminal justice system in its interventions with battered women. We begin as a battered woman might, with police, and continue to a description of the process of laying and proceeding with charges, concluding with court proceedings and a discussion of the issues arising out of these. Issues such as sentencing, access and breaches of court orders are examined.

The next section, A model for providing protection for battered women, also begins with a short description of how the model was derived, then continues through from police to courts, as in the first section, analyzing changes that might be made to provide better protection for battered women.

The final section of this chapter offers some conclusions based on our findings.

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*On Tuesday January 26, 1982, the Supreme Court of Canada ruled "that it is within the jurisdiction of B.C. family courts to rule on child custody, access and guardianship as provided in B.C.'s Family Relations Act." (The Vancouver Sun, Wednesday January 27, 1982.)

The interviews on which our research is based were conducted prior to the Supreme Court decision and thus did not deal with the possible implications of the decision.

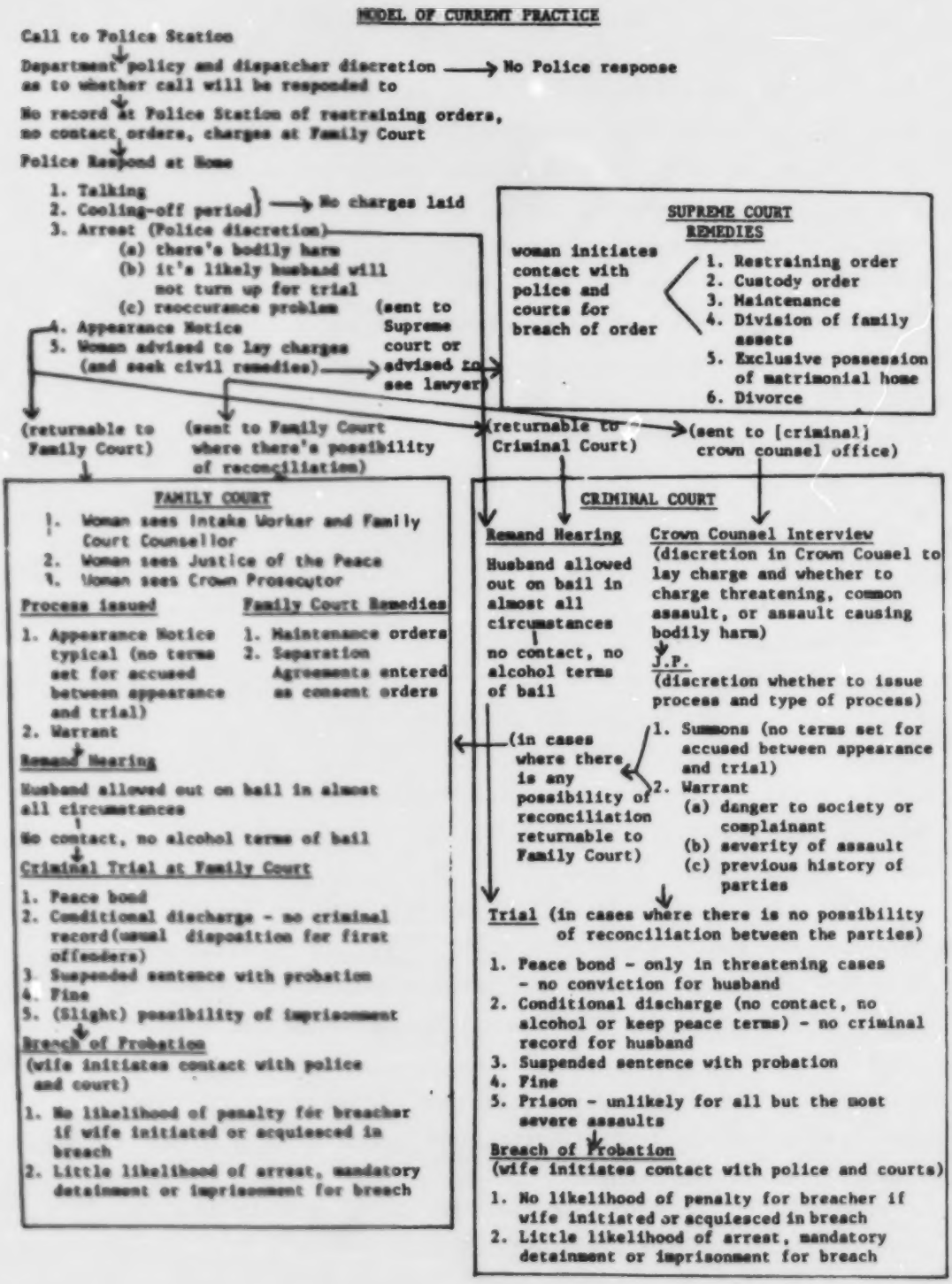
## III.B. MODEL OF CURRENT LEGAL PRACTICE

### III.B.1. Description and derivation of model

The model of current legal practice (see fig. I ) was developed by a lawyer acting as legal consultant to this research project. It is based on her knowledge and experience of the workings of the criminal justice system, on discussions with other legal professionals, with battered women and advocates familiar with legal issues for battered women, and on a literature review. The model was refined through a series of pre-test interviews.

This model of current legal practice is derived from statutory law as modified by case law, and the actual experiences of those who work within the system. For example, while the Criminal Code of Canada suggests that justices of the peace determine whether charges will be laid, it was discovered from the pre-tests that in fact the prosecutors often make that decision in wife-battering situations. That finding was therefore incorporated into the model. As well, it is the policy of the courts in Vancouver to hear in family court all assaults involving people who have a relationship to one another, and the model reflects this diversion process. The provisions for release on bail are determined by the Bail Reform Act. Likewise, the various types of sentences which a judge may impose are statutorily determined. In terms of case law, the Polglase decision, currently before the Supreme Court of Canada, has severely circumscribed the present jurisdiction of family court judges who are no longer able to deal with matters of custody access, civil restraining orders, exclusive possession of the matrimonial home or division of family assets. The model of current practice therefore reflects the fact that women who want both civil and criminal remedies are presently forced to go to two or more forums for comprehensive legal redress, and the spatial layout of the model is meant to exhibit this. An example of the model's reflection of the actual experience of those people working in the legal system can be found in the area of police response and actual dispositions of assault charges. Neither of these matters is codified: none of our informants knew of any specific policies which required police or judges to act in certain ways when dealing with battering situations. However, similar patterns occur on such a

# FIGURE I


MODEL OF CURRENT PRACTICE
Call to Police Station
Department policy and dispatcher discretion as to whether call will be responded to
No Police response
No record at Police Station of restraining orders, no contact orders, charges at Family Court
Police Respond at Home
1. Talking
2. Cooling-off period
No charges laid
3. Arrest (Police discretion)
(a) there's bodily harm
(b) it's likely husband will not turn up for trial
(c) reoccurance problem
4. Appearance Notice
5. Woman advised to lay charges (and seek civil remedies)
(sent to Supreme court or advised to see lawyer)
SUPREME COURT REMEDIES
woman initiates contact with police and courts for breach of order
1. Restraining order
2. Custody order
3. Maintenance
4. Division of family assets
5. Exclusive possession of matrimonial home
6. Divorce
(returnable to Family Court)
(sent to Family Court where there's possibility of reconciliation)
(returnable to Criminal Court)
(sent to [criminal] crown counsel office)
FAMILY COURT
1. Woman sees Intake Worker and Family Court Counsellor
2. Woman sees Justice of the Peace
3. Woman sees Crown Prosecutor
Process issued
1. Appearance Notice typical (no terms set for accused between appearance and trial)
2. Warrant
Family Court Remedies
1. Maintenance orders
2. Separation Agreements entered as consent orders
Remand Hearing
Husband allowed out on bail in almost all circumstances
no contact, no alcohol terms of bail
Criminal Trial at Family Court
1. Peace bond
2. Conditional discharge - no criminal record (usual disposition for first offenders)
3. Suspended sentence with probation
4. Fine
5. (Slight) possibility of imprisonment
Breach of Probation
(wife initiates contact with police and court)
1. No likelihood of penalty for breacher if wife initiated or acquiesced in breach
2. Little likelihood of arrest, mandatory detainment or imprisonment for breach
CRIMINAL COURT
Remand Hearing
Husband allowed out on bail in almost all circumstances
no contact, no alcohol terms of bail
Crown Counsel Interview
(discretion in Crown Cousel to lay charge and whether to charge threatening, common assault, or assault causing bodily harm)
J.P.
(discretion whether to issue process and type of process)
(in cases where there is any possibility of reconciliation returnable to Family Court)
1. Summons (no terms set for accused between appearance and trial)
2. Warrant
(a) danger to society or complainant
(b) severity of assault
(c) previous history of parties
Trial (in cases where there is no possibility of reconciliation between the parties)
1. Peace bond - only in threatening cases - no conviction for husband
2. Conditional discharge (no contact, no alcohol or keep peace terms) - no criminal record for husband
3. Suspended sentence with probation
4. Fine
5. Prison - unlikely for all but the most severe assaults
Breach of Probation
(wife initiates contact with police and courts)
1. No likelihood of penalty for breacher if wife initiated or acquiesced in breach
2. Little likelihood of arrest, mandatory detainment or imprisonment for breach

regular basis that it was clear they belonged in the model of current practice.

### III.B.2. How the interviews were done

The interviews with legal professionals, including police officers and others who work with police (see appendix I for listing), were designed according to the methodology described in section I.E of the study. Each interview, approximately three hours in length, was made up of three parts. The first part began with the question, "How do battered women come to you?" and involved a discussion of the informant's experience with battered women and some discussion of the issue of battering. The second part involved a complete review of the model of current practice. And in the third section informants were asked to review and comment on the proposed model for protection of battered women.

### III.B.3. Police

The way police respond to victims of wife assault is critical. Police telephone operators and responding officers are often among the first people to have contact with the victims following the assault. They are the people many assault victims look to for protection. In the publication, Domestic Violence: a guide for police response, the authors conclude that "...the police have an obligation to enforce the laws equally and without prejudice, using all of the means at their disposal, and all of the help they can get." (Pennsylvania Coalition against Domestic Violence, 1979, p,25) However, it is clear from our informants that enforcing the law is a difficult task. Interpretations of the law regarding wife assault vary. Enforcement is constrained by practices and regulations that are not always consistent with the law as stated in the Criminal Code. Interpretations of the law are influenced by the police officer's attitudes about wife battering, by concerns about the effectiveness of the justice system, and by the kind of crisis intervention training that police receive.

#### (a) Police dispatch response

When a battered woman (or a third party such as a neighbour)

seeks police assistance, it is police telephone operators who receive the call. Police and legal system officials interviewed in this research described some of the factors included in the decision-making process regarding calls to the police. We review here how calls are given priority for response, the effect of manpower limitations, and how calls are classified, with particular reference to the use of the imprecise term "domestic/family disputes."

Calls are given different priority levels. For example: a level one priority, i.e. an event requiring immediate police response, according to one police constable, is a "robbery in progress, an assault in progress, a woman screaming for help." This officer said that what the police call "domestics" are usually assigned level two priority, unless "she [a battered woman calling for help] says her husband beat her and he's still present; then they bump it up to level one priority, 'cause the threat is still present." Another officer's comments indicate that there are exceptions however, noting that: "One time a woman called; the man had slugged her and was still in the house. It went down as a B & E (break-in and entry). She waited two hours." Lower priority is given to "noise complaints" which are often received from a third party, such as a neighbour, "unless the caller says they can hear smashing glass and screaming."

The police officers suggested that calls indicating a person's life was in danger would be given level one priority. A prosecutor at criminal court believed that the key to police response, or the lack thereof,lay in the fact that "in terms of the range of criminal investigations they conduct, unless there is a life-threatening situation, domestic disputes would be of a low priority." Informants from the legal system and an informant who has worked closely with the police for six years believed crimes against property would be responded to on a higher priority basis than crimes against people.

From the interviews with police officers and officials it is clear that in addition to judgements about the relative seriousness of the crime being reported to the telephone operators, several other factors are taken into account in setting levels of priority. Although one police officer stated that "the priority level determines the time you take to answer the call," the number of police officers available to respond, and the general police practice and views regarding "domestic disputes"

are other factors that influence how quickly police will respond in wife-battering cases.

One police officer pointed out that on average more than 1,000 calls are received daily by the Vancouver police report centre. Police officers indicated that the fact that the police department is understaffed creates serious problems in responding to the calls. There are, according to one estimate, only 500 police officers in uniform out of the total of 1,000 sworn constables to respond to requests for police assistance. However, as Levens and Dutton noted in their study of citizens' requests for service, of the eleven telephone lines into the Vancouver police department, five lines are designated for emergency calls and the remainder for general enquiries/complaints. Not all of the calls received are judged to warrant police presence. (Levens and Dutton, The Social Service Role of Police - Domestic Crisis Intervention, 1980, p.13) It is obvious, as a former Car 86 worker pointed out, that police response to calls is "dependent on the quantity of calls that come in and the number of units on the road."

According to our interviews, another factor in police response specifically to wife battering cases is the way in which such a call is classified.

First, there is the problem of identifying the nature of the event when it is reported to the police telephone operator. One police officer noted that noise complaints, which are usually reported by a neighbour or third party, are given low priority. Another informant said that, in fact, "the Vancouver police department doesn't respond to noise complaints" adding, however, that the North Vancouver department does respond. He pointed out that "the dispatcher must exercise discretion because he'll have to determine whether a crime is occurring." However, a former Car 86 worker, who is a social worker with extensive experience in assisting battered women, indicated that in wife-battering cases it is neighbours who call. And they often provide incomplete information:

> Calls always come from the neighbours. Women don't risk making the calls themselves much of the time. So often it doesn't come across as a family dispute to the police because it won't always be described that way by the neighbours.

Therefore, it is likely that many calls that actually concern wife battering are categorized as low priority noise complaints.

A further problem are the general terms "domestic" and "family disputes," which are used by the police. Levens and Dutton report that there are eight types of disputes included in the category of "domestic disputes": husband-wife, neighbour, landlord-tenant, parent-child, "friends," other family, man/woman, and other: unknown. (Levens and Dutton, 1980, p.27) This list shows the range of variation within the category. A "domestic dispute" could mean anything from a fight between two armed neighbours to a landlord and tenant shouting match; from a woman being beaten by her husband to an argument between "friends." With such a general operating definition, clearly a dispatcher could encounter difficulty in determing how urgently, if at all, a response by the police is required.

To assist them in their determination, dispatchers have "a checklist of what to ask for in a family dispute," said a Ministry of Human Resources worker who acts as a liaison with the police. He pointed out that "if people call and say the wrong thing, then calls get lost." Legal system officials interviewed for this research believed, in general, that police would respond if the dispatcher was given certain "cue words" by the person calling for help, words like "weapon," "children," "alcohol" or "drugs." One criminal court judge said it is necessary for a woman to express "a real fear for her life" in order for the police to respond. Some lawyers said they tell battered women to use certain cue words in calling the police for help when they have been assaulted. And further, one lawyer indicated a woman should also try to avoid having her call categorized as a "domestic dispute" by omitting any reference to the fact that it is her husband who is beating her:

> If you have to call the police now, I always suggest to my clients that they don't tell them that it's their husband who's assaulting them. Also, I tell them to say there are kids and a weapon involved. Now if a weapon is involved, the police will go almost immediately. Also, never say alcohol is involved.

Underlying these views about the difficulties in getting the police to respond to family/domestic disputes is a widely reported contention that "domestics" are dangerous for the police officers who respond to them. Of the 41 Canadian policemen who were killed between 1961 and 1973, 14.6 per cent were killed while intervening in family disputes. (Macleod, Wife Battering in Canada: The Vicious Circle, 1980, p.38) The police

officers we interviewed referred to the danger for police when they respond to domestic dispute calls. One said: "You know, we don't like going to these things. Policemen get killed doing this." However, another officer noted that British Columbia has the lowest injury rate on the continent: "I think the danger ranks third behind armed robberies...in the last five years only one officer has been injured answering a domestic."

The general, eight-point definition for "domestic or family disputes" includes situations that might well be dangerous to the police officers who intervene. The statistics on the dangers for police officers of intervention in "family disputes" do not provide a breakdown for the definition, nor do they indicate how often officers were injured or killed in responding to wife-battering cases specifically. The continued use of such general terms as "domestics" or "family disputes" - and the attendant fear factor - may account for the reluctance to respond to wife-battering calls that many informants in the legal system attributed to the police.* A judge we interviewed reported asking police: "When are you going to act? When the woman is dead on the floor?!" However, one informant said that in the Vancouver police department wife battering is "a higher priority matter than it was. The RCMP have been somewhat slower to get into family violence training but they have recognized it as a problem. There are some communities where the RCMP get into this a great deal." And a justice of the peace agrees that the police response is better than it was since some women have been killed: "Cops are prioritizing domestic violence because there have been cases over the last year where assaults have resulted in homicide to the woman."

The use by police dispatchers of a broad term like "domestic disputes" has serious practical consequences for police officers who do respond to

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* A 1979 study by the New York City police department suggested that the false belief of many officers that family quarrels are the most dangerous assignment - a belief originally developed to justify the nonarrest policy and fostered by intensive training in domestic crisis intervention - has led the police into greater danger by leaving them unprepared to deal with "routine" robberies which in fact are far more dangerous. During the five years covered in the study (1970-75) nearly one-third of the incidents in which police fired their guns were robberies. By contrast, only 12 percent of firings were precipitated by disputes of all kinds, from barroom brawls to wife assaults. And the single most frequent cause of police officers' deaths was not domestic-dispute calls but suicide. (Ann Jones, Women Who Kill, 1980, p. 305)

such calls: namely, inadequate information from the dispatcher. Levens and Dutton give a detailed description of the police telephone operators' procedures when calls are received and judged to require police response:

> Details for requests for service which are judged by telephone operators to warrant police presence are written on a partially pre-coded 'dispatch record.' Operators circle one of 47 possible event codes ranked by priority into three groups. For example, a priority one dispatch record contains events such as 'shots fired, screams, man with gun/knife' and 'hold-up in progress'; a priority two dispatch record contains events such as 'suspicious person,' 'indecent exposure' and 'motor vehicle accident'; among priority three events are 'parking complaint,' 'theft from auto' and 'stolen vehicle recovered.' Dispatch records are then time-stamped, assigned a log number and passed to the radio dispatcher. The time the message is transmitted is stamped on the record. When the police patrol responding has coded the event he radios this to the dispatcher and a completion time is recorded. (Levens and Dutton, The Social Service Role of Police - Domestic Crisis Intervention, 1980, p.13)

According to the above outline, it could be assumed that pertinent information is received and passed on to the police patrol. But our informants indicated that this is not the case. Police officers were concerned about the lack of information they got from the dispatch operators on calls for "domestic disputes." Often they don't know which kind of "domestic" they will encounter: "We ask for it [the information]; it's so slow, and we can't get it. You don't know what you're going into." Police officers also do not get any information on the past record of a person they might be investigating. This Vancouver department policy is, according to one officer, intended to protect against an inaccurate record being broadcast on the police radio.

One police officer expressed concern that the model/chart of current practice devised for this research indicated police response is "a hit or miss affair. I'd like to believe they [dispatchers] are not playing God. I'm sure they must dispatch somebody to these domestics." However, the prevailing view of our informants, including battered women and officials in the legal system, is that police response to wife-battering cases is neither automatic nor quick. In fact, it is not evident that wife-battering cases are clearly identified as such. Calls about wife battering may well be classified as low priority for response if the violence of the situation

is not made clear to the police operator. This is often the case when neighbours or a third party make the call. From the police perspective, response to such cases is assured if there is an existing or continuing fear or possibility of injury: only inadequate manpower would cause delays in responding.

However, it is clear that the use of the imprecise term "domestic/family dispute" contributed to difficulties for police in determining what their response should be. It further serves to obfuscate the nature of wife assault cases and may, at least indirectly, add to police officers' fear and dislike of such cases. When not enough information is passed on to responding officers by dispatchers, those officers are ill-prepared to respond adequately and their sense of risk is heightened.

Having reviewed our informants' descriptions of the process of police decision-making regarding response to "domestic/family disputes," including wife-battering calls, we look now at <u>how</u> police deal with such calls when they do respond to them.

### (b) Police practice in responding to wife assault calls

A central consideration for the police, and for those who seek to understand how police function in wife assault cases is: What can the police do?

As we noted at the beginning of this chapter a man who beats, hits or threatens his wife is committing a crime. It is a crime that can be considered either common assault or assault causing bodily harm. Common assault is a summary conviction offence - punishable by a fine of not more than $500 or by imprisonment for not more than six months, or both. Assault causing bodily harm may be charged either as a summary offence or an indictable offence - if it is charged as an indictable offence, a convicted batterer would be liable to imprisonment for up to five years. (Section 245 of the Criminal Code,) There is, obviously, discretion regarding which charges will be laid in these offences.

For police officers who arrive at the scene of a wife assault case, their first task is to determine quickly what has happened and then decide what can be done about it. There are many factors in their decision-making - not the least of which is the discretion inherent in the laws regarding assault. Departmental policy and common police practices that have evolved

over time are additional factors which effect their decisions. Further, societal attitudes towards battering influence police behaviour, as does the training officers receive and their frustration with the response of the criminal justice system.

There is no doubt police officers have experience that makes clear the serious nature of wife assault. One officer we interviewed gave incidents from his own experience. They ranged from "drunken parties" that "end with an argument" - with the woman involved, who was usually smaller than the man, sustaining "a smashed nose, split lip or bashed eye" and calling the police for help - to more severe beatings and murder:

> There was a man I guarded once, a bit of a pervert. He was 6'6", a Charles Atlas. He'd gone to jail for beating his wife, actually he stripped her, and beat her naked; he liked to watch her writhing around on the floor. The police had been called, he'd been arrested. He just told me calmly about it, talked so nice to me, he told me he'd beaten his wife and that he'd liked it, that he'd had an orgasm doing it.
>
> One day I was walking a beat, and a man came up to me and asked me to call the police. I was surprised, because I was in uniform and I was the police. He said, 'My wife is dead in her bed.' It was a rooming house in Keefer Street, it's not there now. The woman was large, with a football for a face. He'd beaten her to death after a night of drinking.

However, according to our informants many incidents are not so clear. As one informant who works with the police said, "Police can't arrest unless they witness an assault or it is very severe." A police officer concurred, noting: "For a common assault charge, we have to see the man strikin' her. For an assault-bodily harm, we don't have to see what happened but we have to have reasonable cause."

Police officers have to decide what is "very severe" or actual "bodily harm." In Wife Battering in Canada: the Vicious Circle, MacLeod points out that "one common practice is to arrest the man only when he has inflicted a wound requiring a given number of stitches." (MacLeod, 1980, pp.38-9) If the police officers involved do not see the actual assault or do not consider a woman's injuries to be very severe bodily harm, they will not arrest. It is left to the woman to lay a charge against her husband, which is not an easy task. One lawyer pointed out, however, that

the existing law regarding "assault-bodily harm" means that police can arrest if there is bodily harm - regardless of the degree of severity - and if there is the likelihood that the assault will recur. Wife battering cases that have been documented by researchers indicate that recurrence is common.

Nevertheless, police officers indicated that they do not interpret the law in the way this particular lawyer interprets it.

When police officers arrive at the scene of a wife assault, several informants suggested, they are conscious of what the woman involved wants or will do. One said women in such situations "want never to be hit again. They want him [their husband] to see what he's done. They want him not to do it again. They don't want to be talking with you about this awful thing." Another informant, after years of work with the police, concluded that "the intent of the woman in calling the police is not normally to have the husband arrested." He suggested that "police get called because people are scared and police have a fast response time and can stop violence. Arrest is not considered by anyone in most instances."

These views of what the women involved want or intend, added to the discretion inherent in the law, leave many officers, according to our informants, with limited options.

According to one officer we interviewed, the policy that governs police practice in wife assault cases is: "Leave him there; invite the woman out. Take her to MHR.... This leaves us feeling powerless." This officer, when he reviewed the model of current practice, did agree that police do have discretion in bodily harm cases and could arrest a batterer: "If the woman has a bleeding nose, she's covered with blood, then I can arrest for 'assault-bodily harm.' It's a dual offence and we can arrest." However, a criminal court judge said he believed police would lay charges if they had even circumstantial evidence (such as bruises) to corroborate a woman's contention that she had been assaulted. A family court prosecutor's comments suggest the police would arrest only if the woman involved required hospital treatment for her injuries. And, in contrast to the above views, a family court justice of the peace maintained that "if she [the battered woman] is bruised and bleeding, they [the police] will take her to the hospital but still not lay the charge. There's no real set rule in these things." From our informants' comments, it is not at all clear that arrest for assault causing bodily harm in wife battering situations

is a regular feature of police practice.

In fact, in describing what police do when they respond to a wife assault call, police officers (and other informants who work with the police) focussed on two procedures they called "SIPP" and "breach." These are procedures that are used when the officers fear for the woman's safety, but believe an arrest or charge for assault is not possible.

According to the officers, "SIPP" is "state of intoxication in a public place." To use SIPP, clearly, the man involved must be intoxicated; if so, the police officer "would invite the guy outside," and arrest him "for being drunk in a public place. And put him in the drunk tank." The disadvantage for the woman in this situation is that the man will be detained/kept away from her for only four to six hours and then released. One police officer said that there have also been "a lot of complaints" about the practice, "as people became more aware of the law.... So now we don't do that unless we want to lie - if we feel the woman is in danger."

An alternative to SIPP, according to our police informants, is "breach." One officer explained: "Section 31 of the Criminal Code says, if we have reasonable grounds to believe there's going to be a breach of the peace, we can arrest someone. But we use it sparingly because we don't want to lose it." He added that the procedure is "not very effective because there's no penalty, [the man] can't be detained and he can go home and really thump her." Another informant concurred, pointing out the problems for the woman involved when such procedures as "SIPP" or "breach" are used to apprehend the batterer:

> Basically on a summary charge, he dries out in the drunk tank for four hours and then he is sent home. The police don't know what he's like when he's released; that's when the real beating may occur. It must be really anxiety-provoking for the woman to be sitting at home waiting for the guy to return after he's been in a jail cell for four hours.

A former Car 86 worker said that SIPP was used often by police but "sometimes we'd try to find other reasons for arresting the man - sometimes even cops would provoke him to take a punch at them so he could be arrested and detained for that."

What these comments show is that police officers do not consider the laws regarding assault to be applicable in many cases of wife assault. These comments also indicate a realization that there are at least some

cases in which batterers should be arrested and/or removed from the home. However, police officers believe that in these cases they must resort to such admittedly ineffective procedures as "SIPP" or "breach" because in most cases assault law does not empower them to arrest batterers.

Aside from interpretation of the law - which is a major feature of subsequent sections of this chapter - our interviews revealed other factors which help to account for current police practice. These include police attitudes toward wife battering and battered women; the training police officers receive; and their frustration with the justice system.

(c) Police attitudes regarding wife-battering and battered women

That "police are also members of the wider society and so share a general belief about the privacy and peace of the family and the woman's role within the family" is cited by MacLeod as an influencing factor in police response to wife battering. (MacLeod, 1980, p.38)

However, our informants indicated an awareness, based on their own experience, of many of the realities of wife battering that have been documented in recent research on the issue.* For example, one police officer talked about the range and variation of wife assaults, noting that some incidents seem to arise from "short-term passing circumstances" while others would be "longer-term problems." He gave some examples of calls he'd attended which were "longer-term problems, say adultery, or relationship to another person [which] was the ongoing source of irritant." These problems "escalated to the point of violence and we'd get called in to keep the peace." He continued:

> Occasionally it'd result in someone being killed. One woman got it with a shotgun, one barrel in each breast. Another time a woman was hit with a pipe full of nails - knocked her brains out. Both were in the Dunbar Ridge area. These would sometimes be premeditated, ongoing arguments, sexual problems, or an argument over a residence.

And a psychologist who has worked with the police for several years stated that "most family violence is not a single impulsive act that never happens

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*See Battered and Blamed - A report on wife assault from the perspective of battered women and Wife Battering in Canada: the Vicious Circle for background information on the issue.

again. It is a repeated pattern that escalates." This informant believes, however, that police officers - especially the more experienced ones - are "blunted by family violence. They don't empathize with the woman who stays."

The comments of many of our informants indicated that wife battering is seen by the police as a difficult and frustrating problem. Much of the police frustration with the problem is attributed to the women who are the victims of wife assault, as the psychologist quoted above suggested. He said "even sympathetic police" assume women should leave their battering husbands and don't understand why it's not a simple matter for women to do so:

> I often hear them say, 'Stupid bitch's fault for staying with that guy.' Or 'If she can reach the telephone and call us, she can get to the front door....' So we discuss economic realities and psychological variables.

Police officers are not unique in questioning women's behaviour. "Why do women stay in battering situations?" is a question frequently asked of those who work with battered women. Recent research with Vancouver Transition House residents and staff indicated that 75 per cent of the residents had left their marriages in the past - many had left repeatedly. However, economic factors - such as the lack of affordable housing, child care, and limited employment opportunities - make leaving a less-than-viable option and certainly no easy task. Furthermore, lack of protection from their husbands' assaults - even after the women have left - was cited as a major barrier in women's attempts to escape (Barnsley et al., Battered and Blamed, 1980, Chapter V). Lack of understanding of battered women's actual situations perpetuates the incorrect notion that women could easily escape if they wanted to. It also exacerbates the impatience or lack of sympathy police feel when they are called to the same address repeatedly.

Similarly, police officers' comments indicate that they consider it is women's own fault if batterers are not charged or punished for assault. They believe women abdicate their responsibility by not pressing charges against the men who have assaulted them or by withdrawing charges:

> Inevitably what happens: the woman says, 'He slapped me and I'm not takin' it.' We put in the report to the J.P. [Justice of the peace]; she goes to swear out the information the next day. Usually she doesn't

> because she realizes she can't charge someone she lives with or she's too scared.

Another officer reported that some of his colleagues told him, when they heard that he was going to be interviewed for this research, "Make sure you tell her [the interviewer]....women don't want to finish. You get involved and try and protect her, then you've got her on your back." As the psychologist who works with the police said, "The perception of the police is that the woman will withdraw the charge or that charges are laid four or five times and then dropped." However, a family court judge pointed out that "whether women withdraw charges or not is not the issue for the police. The role of the police officer is to investigate the charge, not be the judge or the jury."

As frustrated as the police are with what they consider to be battered women's lack of resolve regarding laying charges, battered women are equally frustrated by the difficulties they encounter with the police and legal system. As recent research shows, women are often subjected to such severe scrutiny by police and legal system officials that they justifiably feel they are being persuaded to drop assault charges. (Barnsley et al., 1980, p.92) And as a social worker pointed out, women drop charges for a variety of reasons, including fear and lack of information about the process of laying charges:

> Women are ill-informed by the courts about what's happening to them and to their charge. That's often why the charges are dropped. Sometimes they don't ever hear from the crown prosecutor - they don't know what's going on. All they know is that they have finally laid a charge - but it's in complete limbo. So they do the safe thing and call up and drop the charge.

That police doubts about women's resolve regarding charges affects their practice in responding to wife assault cases is made clear in one officer's description of how the police "used to do things":

> It was a very different system then, that's around 1965. The police arrived, arrested him [the batterer] and he went to court the next day. At that time, there was no doubt in police's mind that the woman would proceed, so he'd be arrested. You couldn't arrest for a summary conviction, but one car would go with the woman to the J.P., and she'd swear the information, and the guy'd be in jail. He'd be held and the woman would be able to go home unafraid she'd get bashed again.

In addition to the belief that women won't proceed with charges, police officers hold other negative views of battered women that influence how they respond. One officer believes that "women are sometimes very devious and will go out of their way to set a man up." Another officer said his experience is that it is "unnervingly common" for a woman to turn against police officers if her husband is arrested by them. He offered explanations for women's behaviour in such situations:

> We arrest him. He attacks us. We fight. Then she's on our backs...the heat is down and her protective, possessive feelings take over.... If you [the woman] can attack the system or the police, you might earn some approval from the husband.

This officer endeavoured to understand the situation and he indicated that his major responsibility must be "whether or not there's going to be a breach of the peace, if someone's going to get hurt."

However, police responsibility to protect people from getting hurt is, for many officers, brought into conflict with their own and society's view of the privacy of the family when it is a woman who is in danger of being hurt by her husband. One former Car 86 worker observed that "the police still think the home is his [the man's] castle.... There's an underlying attitude about being in the home." Another informant agreed, noting that police reluctance to arrest is one result of this attitude:

> It was my experience that the police do feel it is a family matter and that arrest is not the way to go. It [arrest] is respected as <u>not</u> the way to go.

It is important to note that such attitudes reflect an accepted interpretation of police policy rather than any aberrant views of individual officers. For example, the Law Reform Commission of Canada in 1976 recommended that "Police departments <u>encourage the screening out of family disputes</u> from the criminal process." (MacLeod, 1980, p.61, emphasis added) One informant pointed out one way in which police practice for family disputes is different than it is for stranger-to-stranger violence: "Assualts on the street are investigated by detectives but family disputes don't go to the detectives." And a psychologist who works with the police speculated that, in our society, "most people would say, 'Don't get involved in wife battering.' Unless family violence is very severe, there is a tendency

to stay out of family matters." He added that his views of police responsibility have changed:

> Even I used to say that our first responsibility is to keep the family together. Now I feel that there are a lot of families that shouldn't be together. It used to be that discretion was exercised to keep the matter out of courts. Now I think discretion should be exercised to treat assaults between husbands and wives as crimes. No one has a right to hit anyone.

The Criminal Code upholds this informant's point that "no one has the right to hit anyone." However, police officers indicated that is not the impression they get from the justice system. A serious problem for police - one that also influences their response to battered women - is the manner in which wife assault cases are dealt with by the legal system. Their concerns focussed on delays in the system and unsatisfactory disposition of cases.

One officer implied that inefficiency in the court system undermines efficient police practice. He said that he used to work quickly to assist the woman in a wife assault case to lay charges:

> ...a [police] car would take the woman to the J.P. and another car would take the man to jail. We'd often get the sergeant's permission - that'd be rare now - and take her in and he'd be in jail and the court date would be soon. When I was first a policeman, my cases came up in a month.

Noting that court dates are now being set for six months hence, he concluded, "immediacy is slipping from the system."

Another officer said "the court system is very inefficiently run," resulting in police officers spending valuable time waiting in vain in court to testify. He said, "Fifty per cent of the times you don't testify."

In addition to taking up police time, delays contribute to lack of protection for victims of wife assault. One officer pointed out:

> The whole system is cumbersome. Nine to ten months for trial; memories fade, et cetera. Evidence doesn't portray the circumstances. The ugliness dims with men in nice suits and women in dresses, plus memories disappear, and judges do not recognize the seriousness, and victims are not protected.

Furthermore, one police officer talked about the problems of going to provincial court to give evidence in an assault causing bodily harm case and then spending another day in county court, only to have the case end because the accused "cops a plea" or "makes a deal." Another officer pointed to unsatisfactory dispositions as a source of frustration for police, and cited an example of a case in which a woman was killed by a man who had previously been convicted of assaulting her:

> There was a man caught last summer; in family court some time ago he'd been convicted of an assault, and some kind of sexual assault. It was really awful. This time he strapped her down and put a knife in her vagina; she died. He'd been drinking. He was convicted of manslaughter, not murder, and given one year's probation and a restraining order from driving a car.

The officer added that this man has since "been caught for a least one or two child molestings."

In light of the problems they experience with the legal system, it is understandable that those involved in police work made strong statements about the system. A police officer expressed fear that, if the system is not just, "You won't find it respected by those at whom it's aimed or enforced by those to whom it's entrusted."

Police officers' attitudes about battered women and wife battering and their concerns about the justice system are factors that have an influence on their practice in responding to wife assault cases. An additional and important factor is the training police receive in crisis intervention.

### (d) Police training in crisis intervention

In their study, The Social Service Role of Police, Levens and Dutton explain that domestic crisis intervention training for police personnel developed as the social service functions of the police role became more fully appreciated. Domestic crisis intervention training has become, in the past decade, "an acknowledged part of police training curricula in many American,and increasingly Canadian,police departments and academies." (Levens and Dutton, 1980, p.4)

As noted earlier in this chapter, arrest is not a central feature of current police practice in responding to wife-battering calls. One

informant, a family lawyer, described police practice she had witnessed: "The police want to calm things down; they are not concentrating on fact gathering as they would be in other [non-'domestic'] matters."

A psychologist who trains police in crisis intervention stated that he sees his first obligation in training as being "to help reduce police casualties. I try to teach special handling skills on how to read potential violence. And defusing techniques...." He said he teaches officers "how to assess how much violence has occurred; how to settle people down, to conduct interviews," adding that the police officer "has to give the parties room."

Clearly, the widely-held view that "domestic disputes" are dangerous for police has influenced crisis intervention training. As one police constable said, there has been at B.C.'s Justice Institute for five years now "a whole package on how to handle 'domestics'.... We learn how to deal with the situation so everyone goes away a winner." He went on to point out the effectiveness of this training in reducing "risks" to police officers: "In the last five years, there's only one man who was stabbed in a domestic."

Much of this training also appears, from the psychologist's description, to be a well-intentioned attempt to prevent further violence. A study from the Police Executive Research Forum noted, "It is possible that police use of these [crisis intervention] techniques in many domestic disturbance situations has prevented future conflicts and violence." However, citing the lack of follow-up work and evaluation, the author concludes that: "Police simply do not know many of the short-term and long-term effects of the various ways in which they are handling these calls." This same study says that police training was found to discourage the use of arrest in "family disputes" or wife assault cases. (Loving, Responding to Spouse Abuse and Wife Beating: A Guide for Police, 1980, P.37 and 31 respectively.)

The psychologist involved in police training does not consider the defusing skills he teaches to be a substitute for the law enforcement functions of the police. He said wife battering must be recognized as a crime, "so that when police have anything to go on, they should arrest and investigations should occur." He added that "more arrests are required. People are not identified and are not being stopped." Unfortunately, crisis intervention training may give a different message to police officers: the message that their role should be defusing of the immediate violent incident

rather than arrest of the offender. The aforementioned study outlines some of the consequences of using crisis intervention skills in many wife assault cases:

> The traditional police response to these ['domestic'] calls, emphasizing crisis intervention skills and reconciliation of the parties, is inappropriate and unhelpful in cases involving serious injury or repeated abuse, nor is it effective in reducing the number of spouse abuse cases. In fact, it may aggravate the problem by suggesting to assailants that their violent behaviour can be overlooked.
> (Loving, 1980, p. xvi)

Clearly, in light of the danger of using crisis intervention techniques - namely non-arrest and/or the suggestion to offenders that their behaviour is not criminal - police training in such techniques must be balanced by additional emphasis on law enforcement in wife assault cases.

(e) Options available to the police in wife assault cases

Much of the analysis in this chapter of current police practice in wife assault cases has focussed on the methods available to the police whereby offenders can or could be arrested or charged. However, whether arrest is possible or not, police officers have options at their disposal to assist them in dealing with wife assault calls. Two of the major forms of assistance available to police involve services of the Ministry of Human Resources of British Columbia. They are "Car 86" and an MHR/police liaison worker.

Car 86 is a program, established in 1977 in Vancouver, through which a social worker and a police constable team respond to "after hours" child abuse and domestic crisis complaints.

The MHR/police liaison worker receives reports from police officers on cases that they consider require the intervention or assistance of a social service agency or program. The liaison worker is responsible for following up on such reports by contacting the appropriate agency or the social worker who has been or should be involved. The liaison worker is available to handle calls during daytime hours only.

According to informants who had experience with either or both of these services, it is up to the police officers to decide whether such services will be called in. One former Car 86 worker explained that the car is

"not assigned to a call by dispatch. We monitored the radio and if we could tell if a call was a family violence call we might wander over to the geographical area and see if we got called up by the police car responding to the call." Another informant said that although dispatchers sometimes call the liaison worker, police officers who have had "personal contact" with the liaison worker are much more likely to make referrals to him. The liaison worker considers that more police reports than he has access to would require or would benefit from social service referrals.

The police constables we interviewed indicated that it is useful to them to know such services exist. And other informants cited many ways in which such services are beneficial "alternatives for the guys [police] on the street." Car 86, for example, is an extra car available to an overburdened police force to help handle "domestic dispute" calls. A former Car 86 worker said, "We were seen as the car that had time when no one else had time. And when all else was quiet, we'd do regular police work." Another informant noted that "Car 86 makes for more options," pointing out that before this program was established, "The police had only one response: that was to hold for SIPP, maximum four hours." In addition, Car 86 can take the victim of a wife assault case to the Ministry of Human Resources' Emergency Services for assistance, thus saving the time of the police who answered the call originally. Furthermore, one informant described an important function of the Car 86 workers, which is to explain to the battered woman the options open to her - although it was not always the best time for the woman to comprehend the information:

> We'd say, 'You can lay a charge, we can take you to another place to stay.' We tell her all the things she can do immediately. But she can't hear all that information yet. It's really frustrating; she can't hear unless she's <u>really</u> scared. If she's really scared she'll let you take her somewhere for the night.

Reports to the Ministry on the welfare of children involved in such cases is a major part of Car 86 work and is seen as an additional benefit of the service it provides.

The availability of the MHR/police liaison worker is considered valuable for both the police and for social service agencies. One informant talked about the increased understanding of policies, procedures and attitudes that could result:

> Contact is healthy for both sides: for agencies and police. The agencies need understanding of police operations and attitudes.

And in addition to dealing with reports and referrals from the police, the liaison worker also assists social workers regarding legal procedures and police services:

> We get calls from social workers revolving around them not knowing how someone should lay a complaint. This happens fairly regularly.... So then I can explain the procedures. We also get calls for police protection from social workers wanting to get a woman's things [when she's left the family home].... We can get a unit to 'stand by for a breach of the peace.'

However, there are problems with these services. One informant cited policy restrictions as a particular difficulty. Both services involve the Ministry of Human Resources. But MHR policy restricts services, explained one informant, with child welfare matters being given priority:

> The position of the Ministry seems to be: if kids are involved then the Ministry is involved. No kids, then don't bother. There are some morale problems now. We used to be able to make a couple of referrals and they'd deal with them. Now they bluntly state they won't do it. Emergency Services still picks them up. The way you sell a referral now is if there's kids involved. No kids, it's hard to fire any interest.

(MHR policy as it affects protection of battered women is the focus of chapter four of this report.)

In addition, some agencies' mandates are restricted, making referrals to them impossible or at least difficult:

> Agencies carve out their own territories and a lot of people fall in the cracks. The police end up dealing with people who can't get help from other agencies, who don't see them in their mandate.

Other agencies - particularly transition houses - are overloaded. One informant said that "in five years of police work, I have countless times phoned Transition House and have never gotten a woman in there because there was no vacancy."

Another problem is lack of staff or time to assist the police with a large number of cases. A former Car 86 worker described the frustration of being able to do so little to help the woman who had been assaulted.

Giving her information and hoping for the best was often all that could be done. Another informant described the consequences of inadequate follow-up in informing the police of the disposition of referrals:

> [If] the police make a report on a battered woman and she doesn't want to lay charges, I make a referral to an appropriate agency. If the police never hear what happened, and they get another call to the same place, the relation deteriorates because then the attitude is 'we never did anything.'

A former Car 86 worker said it is preferable to have the same police constable and social worker working together for a longer period of time in order to establish confidence in each other's ability to do the job well:

> We kept calling for a consistent police constable to be assigned to Car 86 instead of rotating someone through once a month. The first week of each month we'd spend getting to know one another [police officer and social worker] and then we could begin to really work together. The police constable usually assumes that the social worker won't back him up in a confrontive situation, and the social worker usually thinks the police constable will over-react.

The explanation given for short-term assignments on Car 86 was, "We don't want police turning into social workers. The social work supervisor would keep an eye on the social worker too - to see if the worker was developing a 'police attitude' about clients."

Finally, the separation of roles, outlined in the above quotation, was cited as a serious difficulty in achieving optimum effectiveness in police/social service collaboration. One informant stated that there is a tendency among police to "hand over a case" and then it would become a social service problem instead of a legal problem. He added that this view of a problem as either a social service or a legal problem should be avoided:

> Social services are not an alternative to legal involvement. An assault is a legal matter and it may need additional services. That split philosophy is still being taught at the J.I. [Justice Institute where police, other than RCMP, receive training.]

A social worker, formerly assigned to Car 86, underscored the importance of social services as a supplement, only, to police work - noting that, in fact, the Car 86 social worker's effectiveness in dealing with a man and woman in a wife assault case was dependent on the police constable:

> How well actually talking with the people went depended on the police constable on duty with me. The police are the primary focal point of the Car 86 unit - because of the 'law' and the uniform. And the police constable had to be skilled to get past the 'Yes, officer - No, Sir' stuff.

It is clear from our informants that cooperation between police and social services does serve to increase protection for battered women in some cases. In part because such programs of cooperation are relatively new, their effectiveness may be limited. A major consideration in cooperative efforts with police must be a recognition of the unique and central law enforcement function and responsibility of the police.

(f) Summary of current police practice

In terms of protection for battered women, the way police function is of critical importance. The police have a responsbility to respond to wife assault calls quickly and clearly; to enforce the laws equally and without prejudice, using all of the means at their disposal. If they do not, the consequences are serious. Batterers will not be deterred from continuing their violent behaviour. Battered women will not be protected against further assaults. In fact, inadequate or inappropriate response by the police may actually exacerbate the violence.

From the perspective of the police, however, there are several factors which constrain their effectiveness in dealing with wife assault cases.

The procedures of classifying and priority-setting for wife assault calls is inadequate, resulting in non-response in some cases and in inadequate information for the responding officers in others. A central problem in this regard is the continued use of the imprecise generic term "domestic/family disputes."

When a team of constables does respond to a wife assault call, our informants suggest that non-arrest is the common practice. A major influencing factor in this practice is the interpretation of assault law as defined in the Criminal Code. The law is not considered to be readily applicable in many cases of wife assault. The statement of assault law may appear to be straightforward to a lay person. However, in practice, interpretation of the crucial term in the law, "bodily harm" has come to mean serious or severe bodily harm, which necessitates the use of discretion to determine severity or seriousness. (It should be noted that federal

government proposals in 1981 to amend the Criminal Code would further obfuscate assault law by adding "serious" to the bodily harm provisions.)

For police officers, it seems, there are several considerations that influence their determinaiton of appropriate practice - even in those cases where there clearly is bodily harm. Our informants' comments indicate that the police try to read the mind of the woman involved: What does she want them to do? If assault charges are laid, will she follow through with them? Given the widely-held belief in our society - from which the police are clearly not exempt - that the family is a private institution, there is reluctance to intervene in a "family dispute." Lack of understanding of battered women's situations, and the attendant incorrect views that women deserve to be beaten and that it's easy for women to leave if they really want to, increase the reluctance to act against a batterer.

In addition, police training in crisis intervention can leave officers with the view that law enforcement is a secondary consideration, that their primary responsibility is to apply defusing techniques and "give both parties room." Such training is, in part, predicated on the exaggerated fear that wife assault cases are dangerous for police. Again the consequences are effectively permission for the batterer to continue his violence in the absence of deterrents, and no protection for the battered woman against further assaults.

If police officers seek to protect the battered woman, their recourse seems to be to remove her from the family home or in some cases to arrest the batterer for drunkeness when that is appropriate. These are admittedly ineffective actions, affording only minimal and limited protection for the woman. The effectiveness of these responses can be increased if they are accompanied by social service assistance to the woman. However, cooperation between police and social services is restricted: there are few cooperative programs and those that do exist are constrained by limited resources, policy restrictions and difficulties in balancing social service and law enforcement functions.

However inadequate police practice is in terms of protection for the battered woman, it is neither useful nor accurate to focus exclusively on how the police function. Police action policies cannot be divorced from the policies of actors at other levels of the legal system. Our informants made it clear that the justice system does <u>not</u> give police officers the impression that wife assault is a serious crime.

## III.B.4. The process of laying charges in wife battering

### (a) Introduction

For a woman to charge her batterer with a criminal offence she is usually advised to lay an "information" before a justice of the peace. (An "information" is a legal document which formally charges a person with committing an offence.) In this case the woman would describe the incident(s) and swear before the justice of the peace that she has reasonable and probable grounds to believe an offence was committed.

Assault is an offence under the Criminal Code and as such can be heard in the criminal division of provincial court. However, most assault cases involving wife battering are heard in the family division of provincial court, commonly known as family court. This is ostensibly due to the counselling and support services available there. The practice of hearing family-oriented assault charges in family court has been especially true in Vancouver where the bulk of the informants interviewed for this study work. (See pp. 97 to 102 for further discussion of family court vs. criminal court hearing of assault charges.) It should be noted, however, that this practice varies in different regions of the province. A probation officer/family court counsellor interviewed in a small community outside Vancouver said although assault cases used to be heard in her community's family court, "All the charges I have seen laid recently have been laid in the criminal division of provincial court."

To clarify the procedure in operation at Vancouver family court we asked a family court counsellor there to describe the procedures for battered women. She said:

> A woman sees an intake worker even before she sees a justice of the peace. The intake worker shows her all of the alternatives. The woman usually says she doesn't know what to do. We tell her.
>
> If she doesn't want to lay a charge but wants reconciliation we will do counselling of both parties. This doesn't happen too often.
>
> If the woman goes home after these sessions with us, and doesn't do anything about laying a charge or pursuing civil remedies, she will still know something about her rights.
>
> If the woman wants to separate, we send her to Legal Aid to get help under the Family Relations Act. In that case, the woman will be referred to one of our neighbourhood offices. If there's a problem with custody, we may do

> counselling or mediation but only if the woman and her lawyer want it. The majority of women want this counselling. They want professionals to speak to the husband.
>
> The majority of women come in about threats or assault and ask about laying a charge. A number of women think about laying charges after the intake interview and then come back and lay the charge.
>
> You know, women sometimes think that to get a restraining order, they simply have to sign a paper. They do not realize that they have to go to court.

A criminal court prosecutor estimated that less than one quarter of battered women who had seen the police at the 312 Main Street offices in Vancouver would be sent to lay charges at criminal court - the rest are sent to family court. Although, in the past, women referred to criminal court would be sent to a criminal court justice of the peace, they are now sent directly to the criminal court crown prosecutor. After ascertaining whether or not the woman has a police report, the crown prosecutor will interview her. This interview includes questions about the couple's background, previous restraining or custody orders, previous charges or withdrawals, length of assault, number of blows, injuries, name of physician, corroborative evidence, and so on.

If the crown prosecutor decided to take the charge he would accompany her to the office of the justice of the peace and make a recommendation as to process. At this stage as well most charges are diverted to family court - the salient factor being whether or not there is any probability of reconciliation. If there is a possibility of reconciliation, the charges would be approved at criminal court, but the justice of the peace there would issue "process" returnable to family court, or shift the file to family court. ("Process" is a term used to describe how the husband will be brought to court - either through a warrant for arrest, or a summons to appear.)

The rest of this section of the chapter describes, from the perspective of informants involved in the criminal justice system, the issues involved in laying charges in cases of wife battering.

### (b) Function of the justice of the peace

The function of the justice of the peace under the Criminal Code is to lay the charge and decide what form of process is to be issued.

In simple terms, in the battering situation, the justice of the peace has the role of deciding whether a charge will be laid; whether that charge will be one of common assault, assault causing bodily harm, wounding, or attempted murder; and whether the accused will be arrested or simply summoned to court.

(c) The requirement of police reports

All informants agreed there was a requirement for a police report of the battering to be on record before an assault charge would be laid, largely because, as one justice of the peace said, "The justice of the peace is not an investigative officer." However, another justice of the peace did note that a police report was "not necessary if the justice of the peace wants to lay a charge." In other words, requiring a police report is a matter of discretion on the part of the justice of the peace, although common practice is to demand the report.

In cases where police have attended at a battering incident and advised the woman to see a justice of the peace to lay charges, the woman may arrive with the name of the officer who attended, or perhaps the case number assigned to the police incident report. In these cases, the justice of the peace can track down the report relatively easily. In cases where the woman arrives at court without police having been to the battering scene, and therefore, no police report having been filed - a not uncommon occurrence - there are various ways she may be advised to get a police report taken. One family court justice of the peace described several directions he might take, all based on his assessment of the urgency of the matter. If she appears to be in no danger, she might be sent home and told to call the police and have them attend at her home to take a report. Or she might be sent directly to the Vancouver police station at 312 Main Street to see a police officer there. In these cases, her story would be taken by police, assigned a case number and sent to the justice of the peace at family court. The woman would then return to the family court justice of the peace to continue the process.

Alternatively, in cases of severe battering, where the justice of the peace believes the woman to be under immediate threat, a police officer would be called to the justice of the peace office to interview the woman right away. And one justice of the peace said, "If the woman had a

couple of kids in tow on a rainy day, I would phone police to come down here."

At the end of this process the justice of the peace reads the police report to the woman, and asks her to swear to its truthfulness. Then she is asked to repeat her story to him without referring to the report. Then the justice of the peace decides whether a charge will be laid.

The key point in this first interaction with the court system is the assessment of the urgency of the situation as a basis for response to it by the justice of the peace. This sets up a range of possible responses and makes it difficult for the battered woman, or anyone accompanying her, to know what to expect when entering the justice of the peace office. She may be asked to go to the police station. She may be advised to go home and call the police from there. She may be told the justice of the peace has to wait until he receives the report - which could be several hours or several days. She may have her information taken immediately. This does not take into account the level of fear the woman usually has in deciding to lay an "information" in the first place. For all battered women, the situation is usually urgent. A delay, or any sense of not being believed, or any foresight of not being protected from further beating from her husband certainly will make her fearful for her safety, and that of her children. It may well be enough to deter her from going any further with the legal action.

(d) Acceptance of the information from battered women

In terms of the decision to lay the charge, it is usual that the justice of the peace will lay the charge if the facts as told by the woman constitute a prima facie case - a case made out on the facts. All informants agreed on this criteria for laying a charge, and all informants agreed that a prima facie case is made out if the woman's facts heard alone, without reference to what the accused might say in his defence, indicate that an offence has been committed.

One criminal court prosecutor did qualify his response, however, by saying he would not recommend laying the charge if there was a legal

defence available to the husband on the facts presented by the wife, and that he would cross-examine the woman to determine whether there was such a defence. However, another justice of the peace, at family court, articulated the view of the majority of informants by saying, "I don't look to the defences to see if I'll lay the charge. That is not my decision, that is the judge's decision. Even if there is a possibility of a defence there is still an assault charge there."

All informants also agreed the justice of the peace or the crown prosecutor should not refuse to lay charges because she or he may believe the woman engaged in provocative behaviour prior to the assault. As a criminal court judge stated, "Provocation just goes to mitigation of sentence. It is not a defence to the charge and certainly has no place in any decision as to whether a charge should be laid." (See pages 89 and 114 for comments on role of provocation in bail and sentencing.)

Another justice of the peace said a charge would be taken even if a woman admitted she had been drinking with her husband before the assault - noting that the fact she was drinking does not mean she should be beaten. However, a police officer, commenting from his experience, said: "They won't take a complaint from anyone who's drunk. It's touchy in court if both parties have been drinking." In terms of how often justices of the peace or crown prosecutors refused to accept charges from women, our interviews indicate a range of variation. A family court justice of the peace said the charge would be laid 99 times out of 100. A family court prosecutor concurred, stating: "I think they rarely refuse to take one... they so often see the bruises." However, a lawyer interviewed doubted that justices of the peace take charges whenever a prima facie case is made out, saying that justices of the peace had told her the woman would have to prove the offence beyond a reasonable doubt before they would take a charge.

A social worker formerly with Car 86 said she had had "long arguments with J.P.s about accepting information from battered women," and she'd often had to act as an advocate, making sure the police report was available, briefing the woman, and letting the J.P. know of her own involvement in the case. She said, "If the justice of the peace still insisted on not accepting the charge, my only recourse was to lay a complaint [against the J.P.]." (This procedure involves bringing on an application in Supreme Court under the Judicial Review Procedures Act. The

court is asked for a Writ of Mandamus, which is an order to the J.P. to take the charge.) She contended that all justices of the peace should take the information, and that the crown prosecutor should make the decision about the case.

The issue of the battered woman's possible withdrawal of charges was a point of contention at this stage of the process. One justice of the peace said he never takes a charge from a woman who is at all in doubt about laying a charge, and tells women that "they have the full right to lay charges, but that they need not. And that once they lay a charge it's out of their hands, so to speak," However, another justice of the peace said, "I don't always mention that she can withdraw," and noted that withdrawals can be appropriate if things settle down.

Justices of the peace also mentioned they discussed the issue of the husband's sentence with the woman and that this too has an effect on the woman's decision to lay a charge. They emphasize the charge is a criminal one and that the husband may end up with a criminal record. However, one justice of the peace said he explains to the woman that the man rarely goes to jail. Another justice of the peace tells the woman that the man may go to jail, saying, "It's unlikely...but a fine, discharge and jail are [each] available to the judge."

Although few battering husbands receive a sentence that imposes a criminal record, concern about their husbands receiving a criminal record does deter some women from laying assault charges. One justice of the peace appeared to feed on this fear by "telling them the husband will have a record," though in fact, the J.P. said to us, "If someone appears here, and then in Kelowna, they won't have a record of this in Kelowna." It was further noted there is no central terminal through the police or through Ottawa where common assaults or assaults with bodily harm are recorded.

A Supreme Court judge said two reasons why justices of the peace have a tendency not to charge are because women will withdraw the charges or may not turn up to give evidence, and commented: "There are unsympathetic justices of the peace who discourage women. We have to get over the psychology that family matters shouldn't be laundered in public. Sometimes the justice of the peace says to the woman,'You've been down here before and you haven't proceeded,' he intimidates her through the fear that she won't be able to withdraw." The point the judge made was that the role of

justice of the peace and/or the crown prosecutor did not involve adjudicating cases or being concerned whether the woman might withdraw. A family court judge added to these comments by saying: "Even if 80 per cent of all charges for common assault are being withdrawn, the woman should still be able to get the charge laid...we don't need bozo behaviour like 'I'll not charge him because you'll withdraw.'"

This issue of withdrawals by battered women has already been raised in the police section of this chapter and will be dealt with in more depth in subsequent sections of this report. Given that informants say 55 per cent to 60 per cent of wife battering charges have been withdrawn in the past 10 to 15 years, it is certainly a problem for those in the criminal justice system. However, it is also a problem for battered women, who often state strong reasons for withdrawing their charges. Earlier studies with battered women indicate fear of the husband's reprisals and fear of not being protected by the legal system are two major reasons for withdrawal (Barnsley et al., 1980, p.92). And in many cases where a woman is struggling to make some kind of sense out of her husband's violent behaviour, assurances from him that he will stop beating her may lead her to withdraw charges - feeling that with such a promise the least she can do is drop the charges. Whatever battered women's reasons for withdrawal of the charges, the point here is that it is clearly not part of the job of the justice of the peace to make a decision on laying charges based on whether or not the woman will withdraw them.

(e) Laying the charge: common assault to attempted murder

There are several charges which may be laid as a consequence of an assault: common assault, assault causing bodily harm, wounding, or attempted murder. The Criminal Code includes two different offences under the term "common assault." They are: First, the use of intended physical force against another person who has not consented to the amount of force that was used; second, a threat to use physical force or an attempt to use physical force, where the victim has a reasonable fear that the person making the threat was likely to carry it out. Assault causing bodily harm, found in Section 245(2) of the Criminal Code requires actual bodily harm beyond superficial injuries and that the injuries be a result of the natural consequences of the actions of the accused. Assault causing bodily harm

includes the lesser offence of common assault. If the elements of assault causing bodily harm cannot be proven, the man will often be convicted of common assault.

It is the subjective judgement of the justice of the peace that determines which charge will be laid and whether the man will be arrested or simply summonsed to appear before the court. In terms of which charges are appropriate for injuries sustained, the consensus from informants seems to be that common assault involves anything where the skin is not broken, such as bruises, black eyes and minor abrasions. Assault causing bodily harm entails broken bones, a chipped or knocked-out tooth, any cut requiring stitches, or hospitalization. One informant also added severe beating with swelling to this category and two others said black eyes were charged as an assault-bodily harm. Wounding apparently involves an assault with a weapon, such as a gun or a knife. Threats appear to be charged via Section 745 (Peace Bond Section) of the Criminal Code. It is possible for all charges to be heard in criminal court, while threats, common assault and assault causing bodily harm involving family members, in practice, can be heard in family court.

The raising or reducing of charges was discussed by informants. When asked how a stabbing would be charged in family court, one justice of the peace answered, "Wounding, but it would usually be reduced to assault-bodily harm. We don't usually take wounding charges here. A fractured skull is still an assault-bodily harm. Bludgeoning is an assault-bodily harm. Wounding is a gun or a knife and that's rare in family violence." A crown prosecutor at criminal court said he would prefer an assault-bodily harm situation to stay at criminal court. In his opinion "assault-bodily harm should be dealt with as a legal problem, not a social one; therefore the charge should stay at 222 Main (criminal court) where it will be dealt with legally." The problem of getting charges raised was also described by a social worker who said, "We had a woman who was strangled, who was badly beaten up, she had a restraining order, everything, and the Crown had called it common assault. We had to work so hard to get the charges raised to attempted murder." She felt that family court charges were seen as a way to provide a service, not an end in themselves, and that keeping families together was seen as more important than making criminal charges. (See p.94 for further discussion on this point.)

A comment by a family court counsellor gives an insight as to which charges are laid and the effect of justice of the peace discretion. She said the amount of time that passes between the assault and the woman's visit to a justice of the peace can make a difference and commented, "Probably if she turns up with black eyes, an assault-bodily harm charge will be laid. If she turns up two weeks later, scarless, it'll be common assault."

(f) Proceeding with the charges: summary or indictment

A salient distinction in the Criminal Code is whether a charge will be treated summarily or by indictment. A summary offence is a minor offence that has less serious consequences than an indictable offence. An indictable offence is an offence such as murder, attempted murder, rape, indecent assault, arson or treason, and assault causing bodily harm, in certain circumstances. If the charge is treated summarily, a convicted person is punishable by a fine of not more than $500, by imprisonment for not more than six months, or both; by a suspended sentence, probation, peace bond, conditional or absolute discharge, or any combination of these.

All common assaults are summary conviction offences, but assault causing bodily harm may be charged either summarily or indictably. With indictment a convicted batterer would be liable to a maximum sentence of imprisonment for up to five years. (Section 245, Criminal Code)

When informants were asked whether assault-bodily harm charges were proceeded with summarily or by indictment, they indicated that crown counsel decided in which manner the assault-bodily harm charge would be dealt with. From their experience, they saw the majority of the cases treated summarily. One family court judge said, "Most assaults-bodily harm are sufficiently dealt with summarily. If it's so serious an assault-bodily harm it should be wounding." A criminal court judge reiterated this point and commented, "In very few family cases would you impose a sentence of six months, and they'd be dealt with at criminal court anyway. Family court cases are all summary."

Another perspective on the issue of summary or indictable charges was offered by two judges. One felt an indictable offence "gives the accused the opportunity of a jury trial and the opportunity to grandstand before

a jury." The judge went on to note that if the assault-bodily harm charge is a first offence the accused wouldn't get a sentence of more than six months. A family court judge said the reason for treating so many more charges summarily is because "there are so many more guilty pleas if you allow the man to plead to the summary charge." This judge also noted that with an indictable offence the man would choose judge and jury "and the trial would be infinitely worse for the woman."

So as most battered women are sent to family court rather than to criminal court, and given that battered women tell us they are often advised to think things over thoroughly before even seeing a justice of the peace, it is possible to see how a serious battering could be charged as a relatively minor offence of common assault or assault-bodily harm. In fact, a family court justice of the peace said the charge of common assault predominated five-to-one over assault-bodily harm charges. What becomes apparent here is the effect of the subtle pressure to have wife battering fit the operating framework of family court. We can imagine an example and fit it to the informant's remarks. A woman who has been bludgeoned with an instrument by her husband but who may not wish to divorce him might be seen in family court rather than in criminal court because of the apparent wish to reconcile. The bludgeoning is likely to be charged as an assault-bodily harm rather than a wounding simply because family court does not hear wounding charges. The charge may be treated summarily because, as the family court judge said, "Family court cases are all summary."

Thus we can imagine the difficulty for this battered woman in having her charge taken as a wounding rather than common assault or assault-bodily harm, and the difficulty for her to have the charge heard in criminal court. It seems that the legal system is prepared to go only so far in believing wife battering is a crime that should not be condoned under any circumstances - interestingly enough, this view is commonly shared by the batterer himself.

(g) Peace bonds

Under Section 745 of the Criminal Code, a person who fears that another will cause her or him personal injury or property damage may lay an "information" before a justice of the peace. A warrant or summons will be issued and there will be a hearing. Where the judge is satisfied that reasonable grounds for the fear existed and continues to exist, she or he

will make an order that the defendant enter into a recognizance (with or without sureties) to keep the peace and be of good behaviour for a period that does not exceed twelve months. A no contact order may be attached to this, and sometimes a bond, or deposit of money is also required. Any breach of this peace bond can be reported by laying another "information" and breach is punishable as a summary conviction offence.

The peace bond remedy is often described as a useful remedy for battered women who fear harm from their husbands. The woman does not have to prove that an assault occurred, just that her fear of the man is reasonable. In most cases, this fear is based on threats from the husband. One family court justice of the peace, when asked how to distinguish between a threat and common assault said:

> A says to B, 'I'm going to rip your guts out,' then he punches her - I'll take a common assault charge and not a threatening charge. If the day before, the wife was threatened and the next day he assaulted her, I'd take two charges.

A criminal court prosecutor said, "If the husband says, 'I'll slit your throat,' that would be treated as a Section 745 threatening, not a common assault."

It must be emphasized again that the judge must be convinced that reasonable and probable grounds for the woman's fear exist. This can sometimes make the situation difficult for the battered woman who may be terrified of her husband, but unable to convince the judge of reasonable and probable grounds for her terror. A family court prosecutor described some recent cases like this:

> I have had two cases of threatening where the woman has been very afraid but the judge held that there was no reasonable and probable grounds of fear. By the judge telling the woman that he realizes she's frightened but that nothing has in fact happened to her, this can help the situation.

Unfortunately, it seems here that the very reason for a peace bond existing - to help a person deal with threats of assaults, not actual assaults - is being ignored.

Informants defined Section 745 offences and peace bonds with varying degrees of emphasis as to their use and value. They also offered different

understandings of how they were enforced.

Two contradictory opinions regarding the seriousness of threats chargeable under Section 745 were displayed by informants. One family court justice of the peace said these "are essentially not offences. They are just allegations of threats to persons or property" and that the essential element was that the woman must demonstrate fear at the time of laying the complaint. Yet a family court counsellor said threatening can be "very, very serious...and should be seen as more serious than assault." And a former family court prosecutor agreed, stating, "It seems to me threatening situations are as frightening as bodily harm...threats cause such disturbance and anxiety."

Family court informants generally commented positively on the effectiveness of peace bonds. "They must work as we don't see too many repeaters," said one family court justice of the peace. A family court counsellor said the peace bond process was a constructive use of authority as "the accused knows the court is there with authority and the wife will lay a charge this next time if the peace bond fails." This reveals a common use of a peace bond - by battered women who are approaching the legal system for the first time.

One family court justice of the peace described a process of imposing a common-law peace bond, often in instances where some mitigating factor has been part of the assault. The example given was when a wife did not comply with a husband's access order and was assaulted as a result. Depending on the severity of the assault, the court might consider the non-access a mitigating factor. Apparently in recent years the court has dealt with some of these cases through applying a common-law peace bond, sometimes against both parties. The J.P. felt the common-law peace bond "fits the bill in bringing reason to bear on the situation" and said when the judge applies the bond to both parties they "feel pretty good about it as it apportions guilt." However, it was noted that such peace bonds are rarely applied against both parties - "against the husband alone is more usual."

The effectiveness of this and other peace bonds was not questioned by this justice of the peace, although a family court prosecutor said it was an open question whether or not a common-law peace bond was enforceable. A criminal court prosecutor did not believe that peace bonds worked effectively, stating, "No contact orders work because the man has been

arrested. He's spent the night in jail with other thugs and that will have an effect."

This prosecutor from criminal court did not believe that provincial court judges had the jurisdiction to enforce peace bonds. The question of who does enforce such bonds was also raised by a former family court judge who said, "I don't even know who's supposed to enforce a peace bond. Is it the J.P.? Surely it isn't the judge as there hasn't been a formal charge." And a family court counsellor admitted there was a problem with enforcement of peace bonds, commenting "there isn't the power behind a peace bond as there is behind the probation order."

MacLeod points out that although peace bonds are relatively quick to process, this advantage is outweighed by several disadvantages. She lists these as: first, the fact that the peace bond does not remove the husband from the house unless the couple is already separated; second, the burden is on the wife to provide convincing evidence if the husband does not admit to the allegations, and; third, that it is generally recognized that peace bonds are not really enforceable. (MacLeod, 1980, p.44)

Certainly our informants' remarks reveal some confusion as to the effectiveness and enforceability of peace bonds. It is not surprising then that it has often been said by people working in the family violence field that "peace bonds aren't worth the paper they're written on."

(h) Issuing process: arrest or summons

In the Criminal Code it is the justice of the peace who has the discretion to issue process to the accused - in other words, the justice of the peace decides whether or not the husband will be arrested (held in custody for up to 48 hours, with a bail hearing and usual release on his own recognizance, sometimes with conditions to his release, such as a no contact order), or summonsed to court with an appearance notice (whereby the accused is not held in custody prior to the trial). (Remand/bail hearing and show cause hearing are terms used interchangeably. At this hearing a decision is made as to whether the accused should be held in custody or released on his/her own recognizance. A recognizance is an obligation entered into before a court by a person which contains a condition that he or she must abide by.)

There are several reasons why this decision has an effect on the protection

of a battered woman. Firstly, the accused, once arrested, may spend a night or two in jail. Although some people argue this may only infuriate the husband more, it is a curtailing of his activities by the criminal justice system - a clear sign, perhaps the first one, that his violent actions towards his wife are not to be tolerated. A family court counsellor said succinctly, "The slammer is a real shock - the husband has been threatening his wife for years but he doesn't expect her to do anything. She takes her power when he is arrested." For some women, the time their batterer is in jail gives them a safe, albeit short, opportunity to think about the ongoing protection needs of the family at home. Some women may use this time to go to a transition house, or move in with friends, or change the locks on their doors, et cetera.

Secondly, only husbands who have been arrested can be placed on no contact bail terms by a family court or criminal court judge. (A no contact order is an order from the court, usually issued in bail or sentencing situations, where one person is forbidden to contact another person named in the order in the ways therein described. It may alternately be referred to as a restraining order or an injunction.) The no contact order would be set at a bail hearing, and if a man breaches the order, the wife can report the breach and he can be arrested again. It is obvious that any order is only as strong as the accused's respect for it, so there are instances where no contact orders do not stop battering husbands from further harassing their wives. However, many husbands do take them seriously, and they are another way for the justice system to indicate that wife battering is not acceptable behaviour.

From the interviews, it appears that in criminal court at least, the crown counsel recommends whether the justice of the peace will issue a warrant for the accused's arrest. In response to the question of in what situations would he recommend a warrant be issued, a criminal court prosecutor said a warrant would be considered where there was a history of previous violence, where the accused was on probation, where the husband appeared to be "running amok" or where there were severe threats. However, the prosecutor specifically said that the prior existence of a civil restraining order would not necessarily warrant the man's arrest for a subsequent assault. Furthermore, if the woman had laid, for example, four charges against her husband previously and had withdrawn them, this crown

prosecutor would not recommend arrest for the new charge, reasoning "as she'll probably withdraw the charge again, a summons would be the preferable form of process." A real danger of recurrence was the general rule used by this prosecutor:

> So if the man tried to apologize and the woman feels that this [the beating] has gone too far this time, this is not a dangerous situation. Furthermore, if the previous history of the parties has been that there have been numerous assaults but not particularly severe ones, the chances are I would not recommend a warrant.

One family court justice of the peace stated that warrants were issued in about 65 per cent of the cases and that the criteria for issuance of a warrant involved the seriousness of the offence, the likelihood of further offences being committed, the stability of the accused in terms of mental health, alcohol and drug use, whether the accused was employed, and the previous history of violence between the parties. This justice of the peace also said the fact the man was employed would not be decisive in his issuing a summons rather than a warrant, stating: "If he's employed but the woman's arm is broken and he's on a drunk, I wouldn't hesitate to issue a warrant."

From the answers of additional informants, it was clear that other criteria were also applied when making this decision. In another response to the question of warrant versus summons, a family court justice of the peace observed, "If the woman's out of the house, we'll usually issue a summons. If she has no place to go and there are kids, we'll issue a warrant just to get him out of the house." This justice of the peace was not unhappy with the present situation of removing the woman more often than arresting the man, as long as the woman was safe, saying:

> It's okay if she can go to a transition house or a relative's. If she can't go to those sorts of places, if they are not available, we ask for a warrant in order to get him out of the house. I don't like this; possibly it's an abuse of process.

Confirming the practice of arrest when there was no safe place for a woman to stay, a prosecutor at family court said that more warrants were issued out of family court than ought to be and this was done so the accused could

be put on bail terms. The prosecutor expressed concern about the practice, remarking, "If we arrest, we may ruin it for the whole family if he loses his job."

A family court counsellor and two family court justices of the peace discussed a novel procedure sometimes used in family court. The accused will be telephoned by the family court counsellor. The man is asked to come to family court voluntarily, at which time a court appearance is immediately arranged and bail terms set. The efficacy of the procedure, explained one of the justices of the peace is this: "The situation would be defused; he'll be released on an undertaking; no contact terms are set up, but he won't suffer the 'indignity' of being apprehended at work or spending time in jail." (An "undertaking" is a bail term whereby the accused promises to keep the peace and be of good behaviour. An "undertaking with terms" or conditions, is when certain terms are added to the undertaking.)

Once the warrant is issued, the practice employed by one family court justice of the peace is to call the warrant detail of the Vancouver police. The police apparently arrest the man right away and the justice of the peace observed, "They [the police] are very cooperative. I'm surprised that they have time to respond so quickly, especially since they have more serious crimes to deal with." The family court justice of the peace also assigns a number to the warrant, and gives the woman that number so she can telephone the police in a few hours to ascertain whether the man has been arrested. No such system was reported to exist at criminal court. And as will be seen later, criminal court also does not inform women when their husbands have been released, nor do they tell them about the terms, if any, of those releases.

(i) Issues involving bail

If a battering husband is arrested, he will usually be held in jail until his show cause, remand or bail hearing. This occurs either the day after his arrest, or if he has been arrested on a weekend, on Monday. At this hearing, a judge will determine whether the accused will be detained until trial or released, and will determine what bail terms, if any, will bind the accused until trial.

As noted in the previous section, whether the accused is detained in custody or released immediately with no-contact terms or no terms at all

is quite significant to the wife in terms of her actual safety and her fear. To the woman at home who may not even know whether or when her husband will be released, the process can be a terrifying one. There are varying practices, depending on when the arrest occurs and where the husband is taken, and all have ramifications for the protection of the wife and children.

A justice of the peace at family court described the steps of the charging if the assault happens after family court is closed. He said:

> A lot of these assaults happen at night or on week-ends; obviously we're closed. The complainant [the woman] can go to 222 [criminal court at 222 Main Street] and see a crown prosecutor there. The charge is taken there and then usually sent here, or the man is arrested and the file is sent here.... On arrest there is a show cause hearing here and all arrest cases are heard at 2 p.m. each weekday.

So in these cases, if the husband is arrested on the weekend or in the evening through a charge laid at criminal court, and it is determined that the case should be sent to family court, it is possible that he will be held in custody until family court opens to hear any backlog of arrest cases.

A family court justice of the peace said if a man is arrested and taken to the Main Street police station, the criminal court justices of the peace there are empowered to release him on an undertaking with terms and an order stating he is to have no direct or indirect contact with his wife. Therefore, we see that it is also possible the husband may not even have to appear before a judge at a remand hearing and can be back on the street within a few hours of arrest.

If the decision to arrest has been made by a justice of the peace in family court during regular working hours, common procedure is for the husband to be picked up on a warrant the next day. Unless there is need for a psychiatric assessment, he is usually released on bail, usually with a no contact order as a term of bail. One justice of the peace remarked, "The usual disposition is a Section 457 undertaking; it is always an undertaking with conditions. No monies are involved and the husband is on the street within hours." The matter is then commonly adjourned for a week to fix a date for a trial. A family court counsellor has been assigned to the case by this time and is available for either husband or wife to speak to. The counsellor also presents her or his own perspective

on the case at the remand hearing.

A number of points were raised by informants as they discussed the issue of granting bail or holding the batterer in custody until trial. These include previous violent behaviour of the husband, the likelihood of another assault occuring, the economic situation of the family and mitigative factors of the battering incident.

One criminal court prosecutor listed four factors the court considers in deciding whether or not the husband should be released. The first is the accused's record, in particular his record for violence. The second is the man's propensity for violence. Third is the severity of the assault. The fourth factor is the probability of danger to the wife. The prosecutor noted this must be something more than just her fear: "It is not enough that the wife is scared shitless; the judge as a non-partisan observer would have to be fearful for the wife." He said the likelihood of no bail would probably occur only if the wife was admitted to hospital. However, even if there was a prior conviction for common assault or assault-bodily harm, the husband would be allowed bail.

A family court judge did not go quite as far as that, but did say previous violent behaviour by the man toward his wife, about which she had not laid charges, was not a factor in bail. The primary ground for granting bail, according to the judge, was whether or not the accused would turn up for trial. The secondary ground for granting bail, "safety to the public," was expressed as whether or not the accused is likely to assault again and here "a previous criminal record is important to show that the conduct is likely to re-occur."

This family court judge went on to describe how "judges implicitly believe there is something peculiar in the interaction of these two individuals...in assault cases the judge sees the fact that this law-abiding male beats his wife as stemming from the relationship. He is not seen as criminal in any other circumstances." This view obviously has an impact on the decision as to whether or not the batterer is a "danger to the public."

Another aspect of looking at the interaction of the two individuals in determining bail is the court's view and interpretation of what informants called mitigative factors. "The mere fact of a previous assault and now a present assault and a breach doesn't give me enough to tell you what I would do," said another family court judge. "I need to know the

mitigative factors to decide whether he'll be released on bail." Asked what was meant by mitigative factors in this situation, the judge continued, "I mean things like provocation.... Now by provocation I don't mean that the [man's] behaviour is tolerable, but it may be understandable. No assault is tolerable but we may be able to understand why he did it enough to allow for release on bail."

A criminal court prosecutor also suggested he would look at mitigative factors, stating, "If the husband was drunk and this was the first time he had been drunk, if he learned his wife was running away from him, if he was fired from his job - all of these would be mitigative factors which would lead me to release the husband on bail."

The economic situation of the family is another factor in the bail decision. A family court judge expressed concern about financial support to the family "drying up" if the accused was in jail, saying, "One question will be, 'Is the accused employed?'" A family court prosecutor said: "The judge sees a wage-earner before him whose wife and family need his support. If the accused goes to jail, she is the only one who gets hurt."

So despite the wife's fear of another assault, unless she has been hospitalized or has charged her husband previously (and not withdrawn the charges) and the judge can be convinced that he should feel fearful for her, the husband is likely to be released on some bail terms until trial. Given that a no contact bail order is the primary mechanism employed to control husbands during the period from arrest to trial, it is important to see whether informants found those orders to be effective. A family court judge said that in quite a few cases, the no contact order will not be effective, and added, "Most people do respond rationally, especially if they're sober. But there are anarchists." A former family court judge remarked: "If you're dealing with crazies nothing will help...you may not even have the legal grounds to put the guy in jail but you know he's dangerous." A family court justice of the peace agreed, "You can make all the restraining orders you want, if he's very emotional about the kids a piece of paper won't help." A lawyer said police have told her the enforcement of restraining orders is last on their list of priorities.

The issue of how the court deals with a woman who is terrified about her husband's release was discussed by a family court counsellor. She stated:

> If the woman is petrified, if she doesn't feel that a no contact order is sufficient, I'll advise the prosecutor and the prosecutor will often say to the judge that the woman is extremely terrified. In those cases, I'll suggest that the woman stay with relatives or [in] a transition house. That way, the husband won't know where the woman is. We want to calm the situation down. If the husband is kept in custody and gets riled up, he'll be worse when he comes out.

It is important to note here that the terror of the woman does not induce the court to keep the man in custody; the woman is simply advised to live away from home - to "go underground." It is easier to remove the wife-victim from the home because she is more cooperative than her husband. She is looking for protection. The implication is that in family violence situations, it pays to be the batterer if you want to continue your life as usual. It is the woman who will have to alter her life - to the extent of changing her home, perhaps hiding out and even, according to some women, assuming a new identity.

As we have seen in earlier sections of this chapter, there are difficulties involved for a battered woman in laying charges against her husband. Given these difficulties, it is perhaps not surprising if the woman does not lay a charge for even a severe assault. However, the failure to lay a charge for prior assaults is used here by the courts to minimize the seriousness of the present assault and ultimately aids the husband in being released. What is of concern is that all informants know that the women they deal with have typically been subjected to numerous assaults by their husband before ever coming to court, yet such knowledge does little to change court policy in respect to bail.

It is also significant that courts are often reluctant to incarcerate battering husbands because it is felt their wives and families will be hurt economically. The fact that they are on the street and able to threaten or beat their wives again within hours of their arrest is seen as an unpleasant consequence of keeping women financially protected. The irony is that battering husbands are not always "taking care of the family" anyway. Battered women frequently report difficulties with husbands who run up large debts, husbands refusing to give their wives money for household bills and children's needs, husbands who were consistently

unemployed, or husbands who had money but did not see supporting their family as a priority use of that money. (Barnsley, et al., 1980, p.54)

The other irony is that although fines are common dispositions in stranger-stranger assaults, in those cases there is seldom emphasis on the women and children who might be hurt financially by the imposition of a fine on the male breadwinner. Only if the woman herself is battered does it appear to be a concern of the courts that she be financially protected by ensuring that her violent husband is not jailed or fined. Unfortunately, the batterer's freedom at this stage in the process may result in a woman being afraid, or actually beaten or threatened to the point that she will withdraw the charges against her husband.

And finally, in terms of mitigative factors, it becomes apparent that in the end, an assessment of the woman's behaviour is clearly a part of the court's decision about bail for the husband. Like rape, the assumption made is that some women ask for, or in some way deserve their beatings. The court's decision, based on this incorrect assumption, may reinforce for many batterers the message that their behaviour is not only understandable but tolerable. In fact, the message should be that wife assault is in all cases a crime with consequences.

(j) Possession of the matrimonial home

An important aspect of a no contact order is whether the order will specifically deny the man access to the matrimonial home, by placing a no entry component to the no contact order. Given the zero vacancy rate in apartment dwellings in Vancouver and the severely limited availability of space in transition houses, the exclusive possession of the matrimonial home by the woman may be essential if she is to remain independent of her husband. While there are provisions in the Family Relations Act for an order of exclusive possession of the matrimonial home, that application would have to be commenced in civil proceedings in Supreme Court. The provincial court is presently not empowered to give no contact or no entry orders except as part of bail or probation terms. And, of course, as we have already seen, no bail terms may be imposed unless the man is arrested.

Family court informants all agreed that if there are children with the woman, she should receive possession of the house as part of the bail terms. A former family court judge stated,"My rule of thumb is who gets

the kids, gets the home. Don't get the woman out of the house if she has the kids." However, a criminal court judge stated, "You shouldn't make an award of matrimonial home to the woman through the criminal court judge. That's a civil remedy." Asked what usually happens in terms of the matrimonial home at criminal court, the judge replied:

> Let's say that the police take the woman to hospital. The kids are in care overnight and the husband may be arrested. That probably means that whoever gets to the matrimonial home first, gets it. I would hate to see family matters meshed with criminal matters.

There are some grim ramifications to this judge's response. First, it seems from these remarks that a battering man appearing before this judge should make sure his assault was severe enough to hospitalize his wife because he would likely be out on the street within hours, and would then be assured of having possession of the home until trial, or at least until his wife was well enough to get a lawyer and commence a civil proceeding in Supreme Court as well as laying a charge. Second, there is the difficult process of getting children out of care once they've been apprehended and put into care by the Ministry of Human Resources, and the fear with which most women view the apprehension process. Many women stay in battering situations precisely because of their fear that their children may be taken from them once they start court proceedings. Third, that family matters are meshed with criminal matters and that such meshing denies women protection is exactly the theme of this study.

It is by now clear that considerations of the future relationship of the parties will determine how the case is handled. But where the woman might be protected through a no entry order which affords her a home, at least until trial, we see a reluctance to intermix family and criminal matters.

(k) Summary

To review briefly: Informants described the practice of acquiring police reports in the office of the justice of the peace prior to laying an assault charge. They went on to look at the issues covered in deciding whether or not to accept an "information" from a battered woman. Points such as a perception of provocation on the part of the woman or the

possibility of defence available to the husband were noted as being sometimes problematic at this stage in the decision-making process. However, there was general agreement that these issues should be decisions handled by the judge rather than the justice of the peace or crown prosecutor.

Informants also described varying practices of ascertaining if a woman might withdraw charges. Some encourage the woman to lay the charge regardless of any criminal consequences to the husband; others emphasize the possibility of the husband receiving a jail sentence and criminal record. If the woman has any doubts about laying a charge anywhere in this process, some informants encourage her not to go ahead.

Informants agreed on the injuries used for criteria in determining what charges would eventually be laid, and described how decisions are made about hearing assault causing bodily harm cases in family court rather than criminal court. Informants also agreed that most assault causing bodily harm charges were proceeded with on a summary basis rather than by indictment, thus ensuring that sentences for assault-bodily harm fall in the same range as those for common assault.

Decisions about using a warrant or summons for issuing "process" seemed to be largely based on records of previous violence by the husband, the seriousness of the present offence, present behaviour of the husband and whether or not the woman has a safe place to stay. Warrants were described as being issued in 65 per cent of the cases in family court.

Nearly all battering husbands arrested on a warrant are granted bail with terms within a few hours or days of their arrest. Safety to the public, the possibility of recurrence of violence and whether or not the accused will turn up for trial are the factors involved in granting bail.

Finally, informants agreed that if the woman has children, she should be allowed to stay in the matrimonial home.

Informants' descriptions of the steps involved in making decisions about if, when, how and where charges will be laid against a battering husband clearly identify the quite considerable efforts by the criminal justice system to place, and keep, wife battering within the venue of family court. The reasons for this decision, and its effect on the consequences for battered women, are reviewed in the next section of this study.

## III.B.5. Procedures and practices in the court

### (a) Family court as the forum for wife battering

As we have seen, a large percentage of wife-battering cases are handled by the family court division of the provincial court. The woman might get to the family court by police or friends telling her to lay a charge there. But it is also likely that the case could get to family court after the husband had been arrested and appeared in criminal court. This situation might arise in cases where the man was arrested after family court hours - 8:30 a.m. to 4:30 p.m., Monday to Friday. If the husband was arrested for assault on a Saturday night, he could be taken to criminal court on Monday morning for a remand hearing and then the case would in all likelihood be transferred to family court. Therefore, a major focus of our interviews was to discern how family court handled these cases, and to compare the procedures and practices used at family court with those of criminal court. The first issue discussed was how cases actually arrived at or were assigned to family court. Informants described four factors influencing the decision to hear battering at family court: family relationship, possibility of reconciliation between the parties involved, severity of the assault, and counselling services.

Informants said that whenever there appeared to be a family relationship between the parties, the cases would be handled at family court. One exception noted was that criminal court would hear battering cases of divorced couples or people involved in common-law relationships for less than a year. One family court crown prosecutor did say, however, that if divorced couples had children, the charge should be heard in family court because of the continuing relationship and the presumed need for support systems available at family court.

Another exception to the seemingly general practice of hearing wife battering cases in family court would occur if the assault was very severe and constituted wounding. One criminal court judge remarked that 95 per cent of all family violence cases received at criminal court are referred to family court and said the only cases kept at criminal court were for divorced or separating couples or "when the violence is severe enough that family court could not deal with it." As noted earlier in this section, family court can only hear common assault and assault-bodily harm

charges - wounding and attempted murder charges have to go to criminal court. A family court judge also commented that it was best to have serious offences heard through criminal court as "custodial facilities are not readily available at family court...there are really no secure areas." This family court judge, when asked why the severity of the charge would determine direction to criminal court, said: "Firstly it's the bail provisions," pointing out that family court only operates certain hours during the week so "if the accused is arrested and on remand given a high surety to post, he could only come to family court during relatively short hours. At 222 Main Street, there is a 24-hour service to allow the accused to post bail."

A repeated response to the question of why wife battering cases are heard at family court was the availability of counselling services there. These services are available from probation/family court counsellors. One such worker described the job this way:

> By job title I'm a probation officer. There are three functions: first, to supervise adults on probation; second, to supervise juveniles; third, family court counsellor...I spend most of my time being a family court counsellor. The legislated duties are fairly vague - intervene in family matters, provide advice, act as an expert witness during child custody and access suits.

The counsellor can provide a number of services depending on skill and interest, she said, such as crisis intervention and short-term family counselling (up to six sessions). She also said the basic idea of having the counsellor available to a family is to provide an alternative to the court system for a family in crisis, thus giving the husband, wife and children a "less threatening atmosphere" in which to talk than exists in court.

Some counsellors commented on the "tremendously calming influence" of their services and said: "If it were not for the counsellors and their support services, there would have been a lot more murders and serious assaults." They felt quite strongly that the legal remedy was not sufficient to deal with wife battering, which they termed "a social problem."

Other members of the justice system had varying views of the work offered and done by probation officer/family court counsellors. A family court justice of the peace said: "If the people involved would benef[illegible]

from counselling in their relationship, then family court fits the bill," adding, "One of the objects of the exercise is to assist the parties in reconciliation. That is a principal aim." Another justice of the peace said, "If there's absolutely no chance of reconciliation, then the charge is more likely to be heard at criminal court. Here, the [family court] counsellors are available. Even if the case just sounds like a family matter, it is fired out from criminal court to family court." A provincial court judge said the salient factor is the "complainant indicating a wish for additional assistance, such as saying, 'I still love him; I just wish he'd quit beating me up' or, 'I wish I could see someone about this.'" Another former family court judge added: "Women want to stop being beaten and find out what's wrong with their relationship. They don't want legal redress. Too often they feel that they are to blame." A justice of the peace said, "Family court counsellor's job is to get the people organized so the husband can see the kids."

Interestingly enough, the family court counsellors interviewed stated that "the policy of family court is not in any way to encourage people to reconcile." In very similar ways they all said their practice was not to encourage reconciliation unless both parties expressed a wish to reconcile. One counsellor described the vulnerability of women at this stage, particularly because many husbands are "now so kind and sweet," and said "we go over the history of the marriage with the women ('two years ago you laid a charge...') and support them in their decision to separate." Another counsellor said she considered reconciliation as one of many options and commented that the vast majority of women hope there is "some person who can change the husband's behaviour." She said women often want to live with their husbands, but only if there are changes in his behaviour. According to this counsellor, pressure from children to live with the husband again can make some women decide to return to the relationship even if they had decided it was over.

These views were supported by a former family court judge who said that "well qualified family counsellors do not try to encourage reconciliation," and added, "of course, family counsellors run the gamut in terms of expertise. The good family counsellor should help the relationship to end and give it a decent burial. There are a lot of good people at family court who will do this."

A Supreme Court judge cautioned against the family court counsellor acting as a lawyer or advocate, pointing out they can and should disseminate information and give advice, but "not make decisions." In fact, the family court counsellor cannot be an advocate for any one party as she/he is supposed to provide support and services to both the husband and the wife. The judge, noting that counsellors are governed by the Corrections Department, said: "I don't think probation officers-cum-family court counsellors can put the family together. The family court counsellor to be effective has to look at the whole family. The probation officer looks at only one member of the family."

It is obvious that the support services offered to the family by family court are crucial to many victims of wife battering, especially when they are delivered with a sensitive and realistic understanding of the difference between a "regular" separation between a couple who no longer wish to live together, and a situation based on an incident where a husband has beaten his wife. At the same time, it is important to understand, as previous studies indicate, how laws and policies governing family court practices are based on the premise of maintaining the family as a private institution and discouraging interventions that could undermine the family unit. (Barnsley et al., 1980, p.92). From our informants' words we can see how in many cases there are assumptions that family court counselling practices are designed to avoid, if possible, a break-up in a family, even if there is the possibility of ongoing physical and mental harm for the wife, and perhaps the children as well.

### (b) Comparison of criminal court and family court practices regarding wife battering assault cases

Informants were asked to describe their knowledge and experience of differences in the handling of wife-battering assault cases in family court and criminal court. From these descriptions can be developed a better understanding of the effect of different court practices on battered women and on justice system personnel working with the battered woman. Although some informants had critiques of parts of their own court system, all family court informants found fault with criminal court practices and equally, all criminal court informants found fault with practices at family court.

Issues raised regarding family court were: the effect of de-criminalization of wife battering cases; impact of support staff and services on victims of battering and eventual sentencing; the lack of time given to wife-battering

cases by crown prosecutors; and the kinds of sentences imposed. Issues concerning criminal court included: sentencing; the effect of viewing the batterer as a criminal offender; and the effect of lack of services and information on the victim of battering.

The availability of support services for the family was, again, a common reason for approval of family court as the best venue for wife battering cases. A family court prosecutor noted the importance of counselling and the fact that families had someone to contact at family court for information, saying: "Clearly in families you can't just sever contact. If you could, family assaults would be much easier to deal with." However, a former family court prosecutor said that that court's focus on finding practical solutions rather than legal redress once led her to state to a family court judge: "My client and I came for a legal remedy and not for counselling." This person concluded that the problem of enforcement of court orders arose because of family court's process of dealing with families. A Supreme Court judge also commented on how family court judges "run roughshod over people...yell at Mrs. Jones." The judge felt this might be caused by the high caseload at family court, and was convinced that in Supreme Court "the whole atmosphere is more conducive to getting the whole picture."

Numerous informants talked about family court's view of wife battering as a family and social problem versus focussing on the legal issues by criminal court. A criminal court judge offered this analysis:

> Where there's an obvious attempt by both parties to maintain the family unit, there is no question that family court is better. Where there is genuine fear on the part of the woman, we are the better forum because we don't have the same social-work attitude as family court.

The "social-work attitude" was described as "pervasive" by this judge, who said it came about because of the prevalence of social workers and family court counsellors.

One family court judge described the disparity in the philosophy of family court judges and the effect on the results obtained, noting that family court was set up as a helpful place rather than a criminal place. The judge described the conflict as "between those judges who say, 'We're here to be helpful and to work things out' and those who say, 'We're here because your behaviour is a crime.'" The result is that some judges are

clear that family assault is a crime, while others focus on "helpful measures" - although apparently, according to our informants, all family court judges historically see themselves as assisting in some way with rehabilitation.

This difference between viewing wife battering as a family and social problem versus a legal problem led several informants to comment that in their view, wife battering was perceived less seriously at family court. A Vancouver family lawyer said:

> Anything having to do with families is perceived as a different and less important matter...the assault is obviously a part of the whole family mess...presently going to family court simply removes the behaviour from being criminal.

A Supreme Court judge asked: "In family court, why is everything reduced to common assault? What can you do to a common assault? Why isn't bodily harm used more often?" The judge answered these questions by saying: "Again, the problem is one of viewing the family as sacrosanct."

A family court justice of the peace offered significant support for this perspective by noting that in wife battering, "We are not really dealing with criminals; it's a social problem. It is quite possible that a man who would assault his wife might never dream of hitting a stranger." The unfortunate implication of this last remark lies in the attitude that a wife is somehow a less important person, and perhaps more deserving of a beating, than a stranger. This attitude is still part of the larger society's attitude towards wife battering. As one family court counsellor said: "I've talked to hundreds of men...and their view is 'Look, everybody does this. My dad did it to my mother.'"

Some family court personnel said it was a fantasy that judges at criminal court were more punitive than those as family court, pointing out that "judges there don't want to deal with family assaults...their perception is that emotional ties make assaults less severe than stranger-stranger assaults." A criminal court judge did admit that judges at criminal court don't want to deal with family violence "because of the difficulties of deciding credibility and sentencing" but did say "a man would get a more severe sentence here than at family court...here the man is viewed as a criminal offender and dealt with accordingly."

Several informants felt wife assault cases were trivialized at criminal

court. One family court judge said:

> Criminal court judges are far more lax than we are and far more 'social worky' in dealing with these cases. Firstly, they have three rapes and a common assault on their list for the day. Their attitude is 'get rid of this Mickey Mouse common assault.'

However, a criminal court prosecutor felt that wife battering charges were treated no differently from stranger-stranger violence and added: "If there is a conviction at criminal court, the penalty would be more severe than at family court."

This comment raises the issue of sentencing, a subject hotly debated by informants. There was a common perception by family court staff that criminal court sentences for wife battering cases did not take the battered woman's protection needs into account and were generally less severe than those at family court. A family court judge said:

> At 222 [criminal court] the guy gets less static and the victim gets less protection. The judge at 222 will give a stranger-stranger decision that is befuddled.

The judge described such a "befuddled" decision as:

> The judge will say, 'This is not to happen again; go to jail for 10 days.' Eight days later the guy is released and then what? The guy goes home and beats her up again. At family court, if a woman wants a no contact order she gets it.

A criminal court prosecutor said that on first offences both family and criminal courts would often give a conditional discharge, but criminal court might consider a fine. However, a family court counsellor said: "The sentences are less at 222. To me a fine is nothing. The husband just sits in the beer parlour and laughs about it."

Informants told us the fact that family court has the mandate for looking at the family as a unit makes sentencing a particularly difficult process. A former provincial court judge said: "Dealing with family violence gets confusing. Because there are so many conflicting interests it's really hard to hide behind the law."

Another family court judge said there is a special sensitivity to women in assault cases in family court, recalling situations where a wife first appears with terrible bruises; then three months later at trial, she

typically pleads for her husband not to go to jail. And the judge asks: "What shall we do?" Another family court judge said the factor for him in family violence cases is "how to protect the victim from further assaults." The judge went on:

> How you do that is a nice question. If I'm impressed with the fact that the court order will make a difference, I might talk about imprisonment if the order is broken. But court orders are generally not effective. Moreover, when you're not involved in wounding, you're not looking at jail and we're talking about reasonable protection for the victim. We're not talking about deterrence but community control. For that, I use a no contact order, non-attendance at family home order, perhaps counselling.

Finally, a Supreme Court judge felt that: "Family court judges get jaded, feeling that they've heard everything when it comes to assaults." This judge said:

> If you hear things so frequently you get less severe sentencing; also family court judges are bored and get too lenient to the accused... they should be rotated out of family court.

And a family court prosector admitted:

> At family court you get hardened to family violence. You forget about the victim. If you've seen four assaults in the same day, you get inured to it.

The last issues raised by informants dealt with the amount of time given to assault cases by crown prosecutors, and the lack of information given to battered wives at criminal court. A former crown prosecutor admitted the time and energy spent on common assault at criminal court is minimal, saying:

> The prosecutors literally prepare the common assault in the elevator...the questions asked of the complainant are: 'Can you identify him?'; 'Do you want him put away?'

This particular informant, while sensitive to the criticisms of family court, felt it would be a disservice to a battered woman to send her to criminal court. A former family court prosecutor also noted it was unusual to speak to the woman more than once, "maybe once at the bail hearing, and then just before trial." This person did add, however: "I tried to

deal with the complainant in a human way, understand the pressure she was under and still do her case ably and legally."

Finally, the lack of information given to battered women in criminal court was criticized by family court staff as not affording protection to women. A family court counsellor recalled that women had told her that they were not given much information at criminal court, nor were they told when their husbands had been arrested or when the next court appearance would be. The counsellor said that the woman "has the right to complete information," and that she always gave that type of information to the woman for her protection. She added: "The man could be on the street on an undertaking to appear. The woman doesn't have a copy of the undertaking and she doesn't even know he's on the street until he appears at her doorstep." Another family court counsellor described situations where: "The husband had been arrested, appeared in court the following morning, pled guilty, received a $25 fine and come home.... Women are not informed that the man is released and there is no support counselling. The woman is not brought into the process at all." A criminal court judge admitted: "The system here is not geared to take the woman into account," but felt the impetus should "come from the woman to keep in touch with the cops and prosecutor."

To review, in terms of dealing with wife battering, the major differences between family court and criminal court lie in services and attitudes. Informants said family court offered support services, such as information and counselling, to the battered woman and her husband. Criminal court does not offer these services, nor does it give any guidance to the parties involved as to procedures being followed.

The attitude towards wife battering also varies, with the tendency being for family court to treat battering as a family problem that should not involve criminal overtones. Criminal court is described as being more concerned about viewing the batterer as a criminal offender. However, there was agreement from all informants that because wife battering takes place in a family setting, the sentences in both courts tend to be less than sentences in stranger-stranger violence. Therefore, no matter which court a wife battering charge is finally heard in, the focus will be to protect the relationship between the woman and her battering husband and to diminish the seriousness of an assault on the woman by her husband.

(c) Issues arising out of the court process

As informants discussed aspects of current legal practice regarding handling of wife-battering cases in court, several specific issues emerged. These were: the withdrawal of charges by battered women; obtaining withdrawals; attitudes towards women who do use the court system for redress; and access to children by battering husbands.

From our earlier research we know these issues are contentious for the battered woman as well as those working with her. They are grouped here because it is at this stage of the process - in the courtroom - that they reach a critical stage. If unresolved and misunderstood at this point, they can threaten the protection of a battered woman and frustrate the efforts of those justice system personnel trying to assist her.

(i) Withdrawal of charges by battered women

As noted earlier, approxiamtely 65 per cent of all men charged with wife battering are arrested. As we have also seen in the section on remands, the majority of these men are back on the street within a few hours, usually released on some kind of no contact order. Those men who are not arrested are sent an appearance notice to summons them to court and, therefore, are free until trial with no bail terms in effect to trigger any arrest if they should assault or harass their wives again prior to trial.

One informant told us that over the last 10 years about 55 per cent to 60 per cent of battered women have withdrawn their charges prior to trial. A family court prosecutor stated that 50 per cent of charges are withdrawn prior to the setting of a trial date and 50 per cent of the remainder are withdrawn before the actual trial. Interestingly enough, all informants were able to list many of the reasons battered women give for choosing or being forced to withdraw charges. These include fear of retribution, threats from the husband, pressure from family, economic circumstances, or hope that the batterings will not continue. However, informants' attitudes towards and acceptance of these reasons varied from support to disbelief.

In order to clarify the whole picture of charge withdrawals it is useful to review how battered women see and use the court system to help in their battering situation. Informants all felt that battered women come to the justice system hoping first and foremost that someone will be

able to help them stop their husbands from hitting them. About 59 per cent of these, according to one family court judge, basically don't think they want the relationship to terminate, at least not at this stage. As one family lawyer said, "If the husband wouldn't behave so badly, they'd like to keep the marriage together." This is not unusual. Most women, especially those with children, want their marriages to work, and a great number blame themselves when there are difficulties. The economic reality of living alone or as a single parent, usually on welfare, often keeps women in battering marriages. Some women really do love their husbands, even though they batter, and believe them to be sick and in need of help. Other women are too frightened to even consider leaving the relationship.

Many of these women have been repeated victims of their husbands' violence and the incident which provokes the first charge is not usually the first beating. A family lawyer commented, "The women who lay charges are often severely beaten and they've told their husband ninety times that if they're beaten one more time, they'll lay charges. And this is that one next time."

These women often hope their action of laying a charge will make their husbands realize they are serious, and hope it will stop the battering. For some, this action brings success; but it is often only temporary.

A family court counsellor said women often come to family court because the assaults are getting worse and they are beginning to fear for their lives. A family court justice of the peace said: "Usually there have been many assaults previously, but it's the first time the woman has laid a charge." This J.P. described a woman whose husband had beaten her for years, leaving her with "a piece out of her ear and her finger...permanently bent.... During the last assault, she realized he could possibly kill her." The justice of the peace also commented that as the children get more disturbed by the assaults, and perhaps beaten themselves, the woman decides finally to lay a charge.

One of the most crucial factors to consider when looking at why women withdraw charges is their overwhelming fear of their husbands beating them after the charge is laid. A family court counsellor said: "The fear factor of retribution is enormous. The number of men who will actually kill their wives when they come out of jail is not great, but the [woman's] fear is paralytic."

In answer to the question of whether or not there is protection available

for women after they lay charges, all informants, either directly or indirectly answered "No." A family court justice of the peace remarked: "As I say to the women, 'We can't put you in a glass cage or give you 24-hour police protection.'"

The J.P. pointed out that whatever protection was available to the woman would come from the police and courts enforcing no contact orders and that the woman herself had the sole responsibility for reporting any breaches of orders. A family court judge said: "If the accused person is determined or crazy enough, there is no protection. Any of the release orders is only as strong as the accused's respect for it." A criminal court prosecutor said simply: "I can't promise her he won't hit her."

Thus, in many cases, the woman lays the charge, then withdraws it when she receives another beating or threat from her husband. In some ways, this is a survival tactic - she knows the police and courts can't protect her, so she withdraws the charge - hopefully to afford a respite at home, and she continues to think about how to end the beatings or get away without charging him. Many such women literally pack up and leave town, or flee to a transition house. Some seek other forms of counselling. Many stay and continue to endure beatings; some are eventually killed.

A family court counsellor commented that she advised women who were afraid of their husbands to proceed with the charge "because otherwise the court will not be able to help at all." But another family court counsellor admitted that in terms of the woman's protection "the court system can do nothing for her." She works "to help the woman understand what her options are, and what are the possible repercussions of getting involved in the court system."

One such counsellor mentioned that about a half of all women live with their husbands after laying charges and before trial and stressed: "There should be intervention the first time the assault occurs." Even if the woman thinks it won't happen again, it will, and "if the behaviour had been dealt with the first time, the chances of success in terminating it would have been much greater." This person felt more public information about battering would encourage women to seek help and intervention the first time an assault occurs, but did not suggest measures to teach men that wife battering is not acceptable behaviour.

Informants were divided as to how to deal with women who stayed with their husbands and whether there could be legal protection afforded to

women who remained with their husbands or reconciled with them during court proceedings. A Supreme Court judge said: "A woman living with a man and charging him is an impossible situation - it's such an anomaly." A family court justice of the peace concurred and made the assumption: "The reconciliation pretty well implies that the woman wants to drop the charges." A former family court judge agreed, and said: "One reason I feel that wife battering is not a legal issue is that courts cannot answer the question of why women stay with men who batter them. There's nothing a court can do in the face of that." While it is understandable that these criminal justice system staff feel confused and frustrated with these situations, it is important that the full background to the battered woman's reasoning be understood - she usually returns to the husband on the promise that she won't be hit again, or with the fear that if she doesn't return, she will be assaulted more severely. Also, leaving may not work.

Informants had all seen instances where women had withdrawn charges because of coercion from their families, or because economic hardship had driven them to reconciliation. And a former family court prosecutor had a very clear example of financial coercion by lawyers leading women to withdraw charges. She said:

> I have seen women withdraw charges often, but in my experience in family court that occurs because the husband's lawyer brings pressure on her to withdraw. For instance, the man's lawyer states that the husband will pay maintenance if she drops the charge, or that if she doesn't withdraw the charge the husband will get fired from his job and 'then where will you be?'

A family lawyer also cited this as a reason for withdrawals, saying there was a lot of coercion by the husband's lawyer, but interestingly enough she emphasized that the coercion could also come from the woman's lawyer through pressure to "get the money issues fixed up." She gave the example of a woman's lawyer having stated: "Don't rock the boat. Look, we'll get it all cleared up but if you proceed [with charges] he'll never agree to anything." She concluded that lawyers can put "the economic screws on." Given that it is through resolving economic matters that lawyers make the most money, especially through division of the family assets, it isn't surprising that some would focus on financial issues

and downplay the assault charge. If they didn't, they would receive little or no remuneration since the crown counsel would actually handle the case at trial.

Some informants believed that women laid criminal charges to get civil remedies such as maintenance, division of family assets, exclusive possession of the family home and restraining orders, none of which are in the jurisdiction of family court. The assumption is that women withdraw those criminal charges when civil remedies are received. One criminal court prosecutor believed that this is an abuse of process because "the woman is looking for short-term relief, such as a restraining order, and she is not sufficiently convinced that she will proceed [with charges]."

A former family court judge said he understood that a woman sometimes lays a charge to get leverage for civil matters, but said: "I'm not against that as it's most important that she get the maintenance and house settled. Whether society benefits, the woman probably winds up ahead going this route." A criminal court judge said he was not any more concerned about abuse of the system by battered women than by any other complainants. In this judge's view, people often used the criminal system - to get debts paid, for instance. And a Supreme Court judge quipped: "I believe that women should commence applications for civil remedies right away. I might even be cute, commence my charge, go for my civil remedies, and then withdraw my charge."

Finally, many informants said there were bona fide reasons for women to withdraw charges. There was much discussion around what specific circumstances would make withdrawals appropriate. One family court judge thought withdrawals were in order where the assault was minor and the situation was unlikely to recur. A criminal court judge remarked: "Sometimes it is in everybody's interests to allow the withdrawal. If everything has cooled down, the withdrawal can be a good idea." A family court counsellor described two instances in which withdrawals were appropriate:

> First, where the husband has sought treatment and continues to have treatment - that fact being verified by a professional; and secondly, where the relationship between the parties is developing along 'positive ways.'

She did say, "We warn the woman not to withdraw the charge too quickly, as

it may be too soon to tell if the husband is better. The man may manipulate the counselling just to get the charge withdrawn."

The actual practice of obtaining withdrawals varies depending on which court hears the case. As the majority of cases are heard at family court, its procedures are the norm for women in this position. In the family court situation the woman wishing to withdraw charges is interviewed by a family court counsellor and a prosecutor. Each questions the woman in an attempt to ascertain if she is acting out of fear, threats, pressure from others, or if there is some positive behaviour on the part of the husband that has made her change her mind. If they are satisfied that fear is not her primary motivation - which may just mean that the woman's fear is well-hidden - the woman appears before a judge and the case may be dismissed at that time, or adjourned until a later date to give the court time to assess whether the man is actually reformed or will beat his wife again.

A family court prosecutor described several instances of withdrawals. In one case, the husband had made one visit to Alcoholics Anonymous and the woman wanted to withdraw the charge - it was two weeks before the trial date. The prosecutor asked the judge for no withdrawal until a date closer to the trial, to see if the woman's husband continued with A.A., commenting: "We rarely support withdrawals; we only favour them if there has been an amazing conversion of the man or when the parties have completely severed their relationship."

Sometimes the woman will be told to go to court and tell the judge she wishes to withdraw charges and the prosecutor will oppose, on the grounds that the woman is being threatened. Another criminal court judge commented that women often say they are not afraid, but he knows that they are.

A family court judge had a somewhat easier set of criteria for granting a withdrawal, stating: "If the woman is satisfied that she's protected without the court's protection and her position is reasonable, then okay." Confirming this view, a criminal court prosecutor remarked that at family court a woman's desire to withdraw the charge would not be opposed. He contrasted this to the practice at criminal court where, according to him, the Crown is likely to oppose the withdrawal.

One point raised by informants was that some judges and prosecutors believe, if the woman is not permitted to withdraw, she will become an uncooperative witness, thus subverting the Crown's case. A family court

judge stated a variation of this, commenting that police back off battering cases "because they don't like the fact women may not be willing to testify at trial." In terms of the concept of spousal immunity, this judge's view was that in B.C., a woman could not be compelled to testify against her husband. This lack of compellability constituted a major distinction between family violence and stranger-stranger violence cases where all witnesses could be compelled to testify. However, a family court prosector said it was arguable whether a woman was compellable if the trial involved an assault against her, although she was definitely a compellable witness if the assault was against her child. The prosecutor remarked: "It would go both ways in this courtroom. I lean to feeling that she is compellable, but she may lie or colour her evidence. She may say something like: 'It's my fault, I did x,y, and z.'" One criminal court judge dismissed concerns about this, saying: "If the woman lays the charge and the judge forces the matter to proceed by refusing the withdrawal - the woman will give her evidence."

In summary, we see that a significant proportion of charges made by battered women against their husbands are withdrawn by the woman prior to trial. From informants' experience, reasons for withdrawal include: fear of the husband; threats; pressure from family, friends or lawyer; fear of a lack of protection if the charge continues; economic circumstances; or a hope that the relationship will change (or has already) without proceeding further in the courts.

Questions asked by the courts of a woman wishing to withdraw do vary. Some court personnel vigorously encourage the judge not to allow the charge to be withdrawn, usually citing fear on the part of the woman, or lack of appropriate behavioural change by the husband. Others simply agree to the woman's request with little investigation of the situation.

All informants had experienced charge withdrawals under the circumstances listed above. Some felt these were bona fide reasons for withdrawal; all said they could understand the pressures placed on the woman to withdraw. Despite this understanding, the predominating view was one of frustration, and to some degree, irritation with the wife for withdrawing charges.

(ii) Access to children by battering husbands

Custody is one parent's legal right to live with her or his child and have care of and control of the child. All custody orders must be applied for through a lawyer in the Supreme Court of B.C. under various sections of the Divorce Act or the Family Relations Act. The one basic principle underlying the awarding of custody is what is in the best interests of the child. The court examines each parent's fitness to care properly for the child's emotional, physical and financial needs.

Access is the non-custodial parent's right to visit the child. Again, the legal criterion of whether a parent shall have access to the children is whether it is in the best interests of the child for such access to take place. Usually, only where the non-custodial parent causes serious harm to the child will s/he be denied access or visitation rights.

The court can make rulings that access be generous, reasonable or supervised. When there is some concern that the child may be harmed by contact with the non-custodial parent, some proof of fear of harm must be given to the court and the court may rule that access visits be supervised by a third party - such as a social worker.

In many cases where a battered woman is granted custody of her children, the father's access to the children can be a critical issue. As we have seen, many women are very fearful of their battering husbands. Some women may be living in emergency shelters; they may be in hiding; they may be trying to pick up the pieces of a new life in the matrimonial home or living in a new neighbourhood.

Some mothers have seen their children beaten or neglected by their fathers and are worried about the children's on-going safety during access visits. Many are concerned about the effect on the children of their own beatings from the hands of their husbands. They may have heard stories about children seeing violence in the home and growing up to use it in their own homes; or they may be aware of behaviours they think are related to the children's experience of their mothers' beatings. These fears and worries are often in conflict with their own feelings of guilt about the broken relationship, their own attitudes about the value of fathering and two-parent families, and their own perceptions or the children's feeling about their father. As well, there is often concern about their own ability to provide all the emotional, physical and financial care for their children.

When informants discussed the issue of a battering husband's access to his children their views reflected a range and variation of response. Concerns raised included: the danger to the mother; no access seen as punishment for the children; physical and psychological safety of the children; and finally the issue of supervised access.

A number of informants saw the situation as "a fight between the husband and the wife" and believed that access should be maintained because "both usually love the children." One family court judge remarked: "Why should a child be punished because of an insult from the husband to the wife? You'd need to show harm to the kids."

A criminal court judge concurred in almost identical terms, stating that access should be continued unless there was evidence that the children themselves were being battered by the batterer. A former family court judge stated: "The court should make every effort to have the access continued," and echoed the concern about punishing children by denying them access to their fathers.

All informants agreed that in terms of current practice, judges were very reluctant to cut off access to battering husbands. A family court counsellor said:

> The woman would have to show incarceration of the husband in a mental institution or penitentiary, complete lack of interest in the children by the husband, total mental instability of the father, psychotic breakdown, or sexual abuse of the children for access to be denied.

Several informants felt the question of access had to be decided on a case-by-case basis. Their view was that even though the man was a batterer, he could still be "a great dad." However, while emphasizing that "guys who beat their wives may be good fathers," another informant stated:

> If the wife is scared of the husband's access, that should be taken into consideration in giving access. The husband might use the kids to get at the wife. The husband might use the access to beat the kids.

Concerns of those expressing reluctance about access for batterers revolved around the safety of the children, either physical or psychological,

and the fact that continued access places tremendous strain on the woman. A Supreme Court judge stated:

> I feel that battering is a complete lack of control. The frustration with the wife can run over to the children.... There shouldn't be physical violence to the woman with the kids around. That's detrimental to the kids.

This judge did comment, however, that the battering "would have to be very serious before I would deny access," and added: "If I'm convinced that it's not a game used by the woman to get back at the man, I will award supervised access."

For those with concern about access, supervised access was clearly the preferable alternative. A family court counsellor and a family court judge both agreed that supervised access was called for when the man was in custody, or if there was a no contact order. The judge stated: "Unless there was supervised access, an access order would present the wife with horrendous problems in terms of her protection and the husband knowing her whereabouts, even when a no contact order was in effect." However, the family court counsellor did ask: "If a person needs to have access supervised on a long-term basis, I wonder whether the children are benefiting from seeing him?"

One informant used an acutal experience to illustrate why there is some opposition to access to children by batterers. In the case described the woman received custody after the husband had kidnapped the children:

> The man clearly hated his wife. The wife told hair-raising stories of how he would demean and terrify her. The judge ordered access. I fought like crazy against this. There was sufficient evidence to show that he would abuse his daughter unless he got counselling; he simply hated women that much. After the access order, the husband went to the place his wife was living. He beat her senseless with a tire iron and she wound up in the hospital. Even after the incident the judge was reluctant to cut off access.

At this point the judge granted a temporary no access order, and the wife and lawyer had to keep returning to court to get the no access order extended - "even after it should have been clear that the husband was severely disturbed." The informant, a former family court prosecutor, was concerned about the attitude that as long as the man does not beat his

children, it is in their best interests to see him, even though "it corrodes them psychologically." This informant felt that in the case described, "no irreparable harm would come to the children by not seeing their father for a while."

Another family court counsellor remarked that if children see continual physical and verbal assaults, they learn that behaviour and said: "In some instances, it's good to have a cooling-off period where the parties are isolated from one another and the kids don't see the battering parent." She did add that this may not be viable as a long-term plan as the children may eventually want to see the battering parent.

With the Polglase decision, the Supreme Court is now the only court in British Columbia to have the jurisdiction to award access. The earlier response of the Supreme Court judge, that supervised access would be awarded in many cases where violence had occurred in the presence of the children, is, therefore, of greatest interest. That particular judge went on to say:

> At the Supreme Court level, my view is the prevalent view. My colleagues take a dim view of physical violence in the home, and any allegation of physical violence would be seriously considered in awarding custody or access. I'm not sure the same is true in family court.

From our informants' comments it is clear that the issue of access to children by battering husbands involves attitudes and beliefs about a fathers right to be with his children. While informants also talked about the childrens' right to be with their fathers, their discussion tended not to include a view of either the child's right to choose not to spend time with the father, or the wife's right to effective protection from ongoing physical or mental abuse from the husband.

(d) Sentencing

The summary conviction offences of common assault, intimidation, or breach of a peace bond can receive the following penalties or sentences:

- imprisonment of up to six months and/or a maximum fine of $500;
- probation and a suspended sentence, often with conditions

attached (such as a no contact order or a recommendation for counselling);

- conditional discharge (which means if the accused complies with the conditions imposed by the judge for a certain length of time he will not get a criminal record);
- absolute discharge (the accused is absolved of any penalty).

Penalties for assault causing bodily harm vary according to whether the offence is prosecuted as a summary conviction offence or an indictable offence. If the assault-bodily harm is treated summarily the sentence received by the batterer would be, in most instances, indistinguishable from that received for common assault.

The sentence a battering husband receives has obvious implications for the ongoing protection of his wife, and on any relationship there might be between the two. Ideally, the sentence should also have an effect on the batterer, indicating to him that his actions are not tolerated by the criminal justice system and that his battering must stop, or further sanctions will be placed against him.

In the interviews, informants described a variety of sentencing practices within family and criminal court. Informants also discussed their knowledge of battered women's feelings about sentences and gave opinions on the differences between sentencing in stranger-stranger violence and family violence.

A family court crown prosecutor said that sentencing in wife-battering cases depended very much on whether the parties were going to live together or reconcile, and further, that this factor is also the salient reason why many sentences for stranger-stranger violence were different from those in family violence. A provincial court judge also said, "I consider the possibility of the two parties reconciling," and felt the sentence should therefore be tailored to future as well as to past events. A criminal court prosecutor commented that although family violence should be handled the same as stranger-stranger violence, the mitigative factor is the family relationship, and "perhaps there is a sense there is less danger to the public." And a former family court judge raised the issue of provocation, saying that although it is the exception that the woman provoked the violence, sometimes the issue has to be considered. The judge said:

> Some women deserve to be beaten. She's grown up in a home where she's been beaten and she wants that, expects it as part of being loved. That fact should go to sentencing. How can you blame people for some events, even battering? A woman may drive the man nuts. I would give a conditional discharge with a no contact order because the relationship had to end.

There were two main responses from informants as to the disposition (sentencing) on a first offence of common assault. (This does not necessarily mean this is the first time the husband has beaten his wife - it is the first time such an offence is being heard in the court.) Three family court counsellors, a family court prosecutor and a criminal court judge said suspended sentences with probation terms were the most common disposition. One counsellor pointed out that on a first offence, this sentencing was essentially the same whether or not the case was stranger-stranger or family violence.

The terms of probation were listed as: (1) to keep the peace; (2) no attendance at the matrimonial home (if the wife wishes); (3) no direct or indirect contact (if the wife wishes); and (4) counselling terms. In these cases, the penalty for battering is: an order to keep the peace; recommendations for counselling; and perhaps orders for the husband to stay away from the wife and children for a certain period of time. Note that the onus is on the wife to make the decision regarding further contact with the husband. This has the effect of putting her in the role of co-sentencer.

Several informants said they hadn't had a lot of conditional discharges, and did not think it usual for judges to give conditional discharges, asserting: "Violent acts don't lend themselves to discharges." Other informants, including two justices of the peace at family court, a criminal court prosecutor, a former family court prosecutor and a family court judge said the common disposition for a first offence of common assault would be a conditional discharge. One family court judge said conditional discharges were becoming more frequent and were largely dependent on whether or not the husband had a lawyer.

This sentence has conditions attached, such as no contact orders or an order for counselling, and if all the conditions are met the man does not receive a criminal record. Informants commented on the fact that "if the accused stays clean, there's no conviction with a conditional

discharge" and felt this was a deterrent to further violence by the husband. A justice of the peace pointed out that a battered woman often wants a conditional discharge "as she doesn't want the husband to have a record." Hence in all of these cases of conditional discharge, if the batterer meets the conditions laid down by the judge, he will have no criminal record.

According to a former family court judge, an absolute discharge (absolving the husband of any penalty) might be the disposition for a first offence of common assault, "if it is an isolated incident, the woman provoked the assault and there is a good chance the guy won't do it again." A justice of the peace said absolute discharge was applied in a limited number of circumstances, such as "where evidence reveals that it is not a particularly serious offence, and it is supplemented by evidence of a probation officer that the man is peaceful...the man has learned his lesson and there's no likelihood of a repeated offence." We could project therefore, that if a woman were to lay a charge the first time she was beaten, it may well be considered an isolated incident unlikely to occur again. It is also common knowledge that many batterers are not violent in any other way than towards their wives; thus the man may be judged to be "peaceful." Then, if provocation can be alluded to in some way, there might be grounds for an absolute discharge. In such a case, it could be that a wife's first attempt at finding protection from the justice system would likely prove fruitless.

There were various responses regarding sentencing in cases of chronic violence and assault causing bodily harm or severe injury. A family court judge essentially described a sentence very similar to a first offence of common assault in noting that the disposition would be "a no contact order - any subsequent battering and/or breaches [and] the guy would be arrested." However, a criminal court judge said that in cases of severe injury "perhaps a short jail term and probation would be in order." This judge was the only informant who actually mentioned any kind of incarceration for more severe family violence.

A criminal court prosecutor pointed out there is "not always prison even after the second assault-bodily harm.... Criminal court judges are not inclined to imprison for assault-bodily harm on the second offence, not even three or four judges in this building would order jail - the rest would go for a fine or a suspended sentence with probation." This sentence

is the same as those described earlier for a first offence of common assault. Again, the possibility of reconciliation was raised as a reason for "a total reluctance for imprisonment." One judge said, "Somehow I have to get through to the man that he's committed a criminal act and that subsequent violence will be met with imprisonment. But if the parties are together I don't want to hurt their chances of reconciliation."

A former family court judge said it was clear "that some prosecutors are advocating jail sentences for severe batterings and some judges won't go along with that." The judge said: "The scuttlebutt is that the judge's attitude is conditioned by the fact the assault is on the wife," but his reason for not treating family violence the same as a "beer parlour fight" was because of the ongoing relationship between the husband and wife after the assault is resolved.

Several informants were eventually specific about when imprisonment would be imposed on battering husbands. A family court justice of the peace said imprisonment was rare and would be applied "where there have been previous convictions and the case before the court is serious and there is evidence before the court from the probation officer which is adverse...the man is still defiant or still predisposed to violence or he has alcohol or drug problems which pose a danger to the wife." A family court counsellor said she has recommended jail "where the attitude of the husband is that there's no one who will be able to stop him...or if there's a severe alcohol problem, send the guy to Alouette Lake." (This is an alcohol treatment centre.) A family court judge said jail would be considered when there is an aggravated situation - such as a previous history of violence, including incidents where the woman may not have laid a charge.

There were varying opinions as to the usefulness of putting a batterer in jail. A family court judge saw jail as a deterrent with no rehabilitative function, saying: "I have to be satisfied that the man will be deterred by a jail sentence, or that the public will see that it is an important enough crime to warrant a jail sentence." However, a former family court prosecutor felt batterers should go to jail because it was "most important for the victim that there be a consequence to the assault, and maybe if sentences are applied consistently enough the lesson will get through to men also." This informant and several others also noted they did not see jail as therapeutic, but as a protection to society. Another family court prosecutor commented: "Jail is only appropriate where the

parties don't want to have anything to do with one another, because the woman is dependent on the husband's support otherwise." If the man loses his job because of the jail sentence, "She is in a worse position, particularly when they are going to live together..they'll be in more debt and have more stress."

Intermittent or weekend sentences were described as a seldom-used solution to this problem. One informant said: "If they [husbands] have to have mandatory counselling and weekends in jail then they will see that it is in their best interests to change something in their behaviour." And a family court justice of the peace noted that there is a provision of the Criminal Code that states "where sentence does not exceed 90 days, order sentence to be served intermittently," but added that judges aren't aware of this provision and don't apply it.

Informants said the people most reluctant to send batterers to jail were the battered wives. "I haven't run across women who want to throw the book at their husbands," said one family court counsellor. "A woman just doesn't want to send her man to jail," said another former family court prosecutor. There were four reasons why informants felt this was so. First, the women have to deal with the fear of what their husbands will do to them and their children when they get out of jail. Second, many women do hope the husband's behaviour will change if the charge is at least laid and heard in court - they hope sanctions will not have to be applied. Third, there is often pressure from other family members or counsellors not to send the husband to jail. Fourth, as one lawyer puts it, "A woman who really wants her husband in jail will be seen as neurotic." In effect, this means the woman is encouraged to think that jailing her husband is inappropriate behaviour on her part.

To summarize, the relationship between husband and wife was seen by most informants as a mitigative factor in sentencing men who beat their wives. Suspended sentences with probation and conditional discharges were most commonly mentioned as the disposition for a first offence of common assault. In cases of more severe injury to the woman the courts still tended to dispositions of suspended sentences with probation, or fines, unless court staff experienced defiant or violent behaviour from the husband, or saw that there was an ongoing alcohol or drug problem. Short jail terms, counselling or drug-alcohol treatment were mentioned as sentencing

responses in those cases.

Two perspectives were presented on the value of jail sentences. Although everyone agreed that jail was not therapeutic, one view held that jail might, in some cases, deter the man from further violence. The other view stated that jail sentences at least indicated to the victim that there were consequences to the assault.

(e) Enforcement of breaches

If a battering husband breaches (that is, disobeys) a probation order, he will be guilty of an offence punishable on summary conviction. (Section 666 of the Criminal Code.) Examples of some breaches are: when a husband, despite a no contact order, succeeds in having contact with the wife - such as entering her house uninvited; or when he does not appear at a counselling session he may have been ordered to attend. It is important to note here that if the wife is seen to have acquiesced in any way in the breach, such as letting him in the door if he demands entry, then the husband will not usually be considered to have committed a breach.

For the battered woman who has laid charges against her husband and seen the case through court, an act of breach by her husband affirms her fear that nothing will stop him from harassing her. Some women stop at this point and do not bother to seek enforcement for the breach - they simply see no sense in going on. These women might be forced to accept the return of their battering husband and ongoing violence as inevitable, or they might stop seeking protection from the criminal justice system and simply flee, seeking protection by moving away. However, some women do begin the search for further protection by calling police or the husband's probation officer and asking for enforcement of the breach.

Issues surrounding the topic of breaches and their enforcement as described by informants included: how breaches occur, police and court enforcement of breaches, kinds of breaches, and subsequent sentences.

One justice of the peace at family court remarked that husbands generally had respect for the orders and that about one out of every twenty cases of wife battering resulted in a breach. A family court prosecutor also said that breaches were not common. And a family court counsellor said she didn't know how many cases came back but "the majority did not seem to."

Another justice of the peace said perhaps the wife may not be reporting breaches, and described situations where "the husband is convicted, probation is imposed, the wife goes back to live with him...in a number of cases they come back to haunt us within six months."

The issue of who initiated contact in a breach situation was considered by informants to be important in determining whether a breach had in fact occurred, and whether the woman's situation was deserving of further police and court action. Varying views were presented. A family court counsellor said, "The police won't come if in their experience the woman has initiated the contact." Several informants felt the assumption made was that "if the wife initiates the contact it is implicitly assumed that she deserved the beating she got."

There were also varying interpretations of what "initiating contact" actually meant. A former family court prosecutor noted that women were often characterized as "calling the man over to the house and then manipulating the situation to get the husband picked up by the cops for breach of the restraining order." Another justice of the peace said that quite often "women let men come back because they feel it'll work out" and in those cases "you can't really say it's a breach." However, this justice of the peace went on to say that the woman does not often initiate contact but the husband says she has. In those cases of contradictory evidence, this J.P. would apparently take the charge.

Once again, it is critical to examine the role that fear and hope play in any woman's supposed decision to see her husband although she may have a restraining order against him. The situation is seldom cut and dried. He may seem contrite and anxious to make amends; she may have been encouraged by others to reconcile. Emotional and economic circumstances are also factors called into play at such times. The wife may well judge the husband to be sincere in his promise not to assault her again and agree to see him, hoping that things will be different. Sometimes things are different, sometimes not; sometimes they are different for a little while.

Another reality may be that she is too fearful not to give in to whatever demands he may be making on her. Things may have been relatively quiet in the courtroom, but in the isolation of the home his demands or threats may seem once again too awesome and real to ignore by saying, "Go away or I'll call the police." And in some cases of course, she has no choice; he is there and hitting her. And if the police arrive, it is her

word against his that she did not let him in the house of her own accord.

The difficulty (and importance) of the woman being able to convince the police and probation officer that the breach was legitimate and worthy of further action, is shown in a comment from a family court justice of the peace. This J.P. makes a habit of conferring with the crown prosecutor about whether or not a charge of breach should be accepted - except when a probation officer says the breach should be laid - in which case "I'm more likely not to canvass the issue with Crown and just lay the charge." This means that as far as this justice of the peace is concerned, the battered woman's story of the breach, when unsubstantiated by a probation officer or police, will be subject to the further scrutiny of the crown counsel before the J.P. will make the charge.

After a wife has convinced police or probation officers, and a justice of the peace that a breach has occurred, then various actions can take place, depending on whether the breach involved a subsequent assault or not.

There was general agreement that a breach made without a subsequent assault was not cause for arrest or jail. Instead the husband would be summonsed to court and told that subsequent breaches would get him remanded into custody. One criminal court judge did say that the man may be remanded "if his sole purpose was to harass the woman; but if there's a legitimate reason for him to be there, such as wanting to see his kids, the man would probably not be remanded."

In cases where violence occurs with the breach, a variety of responses came from informants. The most severe came from a criminal court judge who said the man would be remanded in custody until trial - about 30-45 days. On the other hand, a family court justice of the peace said a breach with new violence would mean new charges, but a man would unlikely be remanded until trial unless the second assault was very serious, noting, "It's unlikely for the husband to get lengthy detainment if he's just conventionally assaulted her, slapped her. He's likely to be looking at a surety with an early trial date." (Surety is when another person is willing to pledge good behaviour on the part of the accused.) Another family court justice of the peace concurred with this view, saying a warrant would be issued and that the man would be released and out on an undertaking or surety. This justice of the peace noted that under the new Bail Reform Act men are not usually kept in custody and said, "You have to be a third time around to be held in custody until trial."

Some informants felt the courts were too lenient in their handling of breaches. One person said: "If there's a restraining order and the husband's not restrained, then something more formidable must be done... the individual should then be treated as a criminal." And a former family court prosecutor emphasized that assaults and enforcements of orders "are all legal matters to be enforced legally" and felt that to a large extent "the tremendous problems with enforcement of family court orders arise because of family court's process of dealing with families."

Interestingly enough, a number of judges interviewed stated that active police enforcement of breaches depended on whether or not police felt they would be backed up by the courts. A Supreme Court judge said, "Police get fed up if courts don't enforce their own orders severely enough." Another judge concurred, stating, "Police want to know if there's a breach of recognizance, the courts will not simply release the man." And a criminal court judge actually said, "If I back up my orders police will see that my orders are complied with...the attitude of the court determines the police response."

In summary, the key issue on enforcement of breaches is the immediacy and amount of protection a battered woman can receive and the onging deterrent effects that can be placed on her husband. From the informants' descriptions we can see the similarities between the first laying of assault charges and calling for enforcement of a breach committed after the man has been sentenced. It seems the wife is back where she started from - the onus is on her to prove he breached orders of the court and lay the charges, to prove her restraining order is not outdated, to prove she did not provoke or acquiesce in any contact with her husband. Despite the fact the man is already known to the criminal justice system as a wife beater, we find a majority of informants describing practices that give him the benefit of the doubt and reinforce his belief that he can do what he wants to his wife and have minimal sanctions placed on him by the courts. For many women, a doubting or delayed reponse reinforces her fear that there is little or no protection from her violent husband available from the legal system.

### (f) Attutides towards battered women who use the courts

As we have seen, many people find it difficult to understand

why women stay with or return to their battering husbands. Such behaviour is seen as passive, neurotic, helpless, or masochistic. It is significant that these and other negative assessments regarding battered women who do use the court process to seek legal redress were made by some of our informants.

Some informants viewed these women who were adamant about having their husbands punished for their battering as "pathological." As a former family court prosecutor remarked:

> Women are so reluctant to fight and [when they]...start to fight too hard, women appear neurotic and shrill and people tend to lose sight of the justice of [the woman's]...cause and see only her neurosis and obsession.

In defining what "fighting too hard" entailed, the prosecutor said: "A woman who really wants her husband in jail will be seen as neurotic." A family court judge concurred, stating: "The woman is seen as vindictive, mean and nasty if she wants to throw the book at her husband, whereas she wouldn't be seen that way in stranger-stranger violence." That judge went on to observe: "Sometimes women are perceived as having personal vendettas, you know, 'I'm going to get him.'" In summary, the judge concluded that these perceptions are the result of some people's inability to understand battered women's situations:

> I've talked to prosecutors (even women) and their frustration level leads them to lack empathy with battered women. You often hear, 'I can't understand why she stays in the situation.' When you have self-confidence, it's hard to comprehend situations where women would remain and take that abuse. The attitude is, 'We're here to help you. What are you doing going back to live with him?'

A family court counsellor discussed her own experiences with battered women and then went on to analyze views towards them. She said:

> I haven't run across women who want to throw the book at their husbands. At times of crisis, the woman is very upset and you feel something for her. Women look white, terrified, want to lay an assault charge... this happens all the time. You try to comfort them. However, younger prosecutors lack empathy with women who stay in battering

> homes. For my age group, it's a big deal to separate.

Some informants not only discussed general perceptions of women, but their own biases too. A family court prosecutor commented: "I haven't seen the really vicious lady but I'm sure they're around. I know that I sometimes feel that the victims in these cases are neurotic just like I sometimes feel that the victims in car accident cases are too, sometimes." A criminal court prosecutor remarked: "As a general comment, I would like to say that I have little empathy with women who remain in the home and refuse to charge after the stories they tell me. Sometimes I feel they are just waiting to be victims." He then added: "I guess I have never felt helpless in that way, but I can't understand how women could stay in certain situations."

One informant described a personal experience which had helped her establish at least partial identification with the plight of battered women:

> Presently there is no protection for women. You know, I am receiving phone calls from someone I don't know who clearly knows me and the layout of my home. I feel violated, exposed and almost raped. I feel there is no protection. I try to understand whether just being a man makes a man feel invulnerable. There are a lot of pressures on men and I don't discount them. But I wonder if they feel so hopeless. This is especially terrifying if you are a woman with a child. Not only do I not feel capable of protecting myself but I know that I am my child's protection too.

There are several observations to be made. First, as wife battering is not seen as criminal by many of those involved in the legal system, the women who want criminal sanctions imposed against their husbands are seen as crazy, mean, or unworthy of empathy. More important, however, it is clear that at least in part, the ability or inability of the intervenors to identify with the women they serve will determine how effectively they will handle women's cases, thereby determining what kind and amount of protection women will receive from the legal system. The family court prosecutor who is receiving obscene phone calls decried the view of women as neurotics. But the criminal court prosecutor, stating "I have never felt helpless in that way," regarded women as waiting to be victimized.

(g) Summary - procedures and practices in the court

Most cases of wife battering are dealt with in the family court setting. Exceptions to this may be cases where the husband and wife are divorcing or where the violence against the woman was so severe that the charges cannot be dealt with in family court.

Family court, by design, can offer the husband and wife conciliation counselling, referrals, resources, and much information about legal procedures. As well, family court staff offers case analyses, sentencing and custody recommendations to the judge, as well as probation supervision to the husband.

From our interviews we can discern two prevailing views of family court procedures and practices. The first view holds that family court is the most effective forum for wife battering because of a supportive atmosphere that is less threatening to a couple and their relationship. The focus here is on facilitating a solution to wife battering that does not necessarily break up the family or leave the batterer with a criminal record. By and large, informants expressing this view described wife battering as a social problem rather than a criminal or legal one.

The second view of family court supports the concept of providing support to family members, but prefers to see wife battering treated as a legal problem with all the attendant criminal implications, regardless of the familial relationship between the man and woman. Therefore the first focus of these informants was protection to the wife rather than protection of the relationship.

As we have seen in previous sections, from laying an information to proceeding with the charge and deciding about arrest and bail or summmons, the most consistent action on the part of criminal justice system personnel is towards diminishing the criminal aspects of violence directed towards a woman by her husband. The result is clearly a blunting of the Criminal Code sections dealing with assault. The husband's belief that he can do what he wants with his wife is thus reinforced; the wife's belief that the justice system will act to deter her husband from breaking the law by beating her is negated.

With so much emphasis on the preservation of the relationship and the family, it is perhaps not surprising that many women decide to withdraw charges against their battering husbands. Often the woman herself believes

that "one more chance" will help her husband stop. As well, many women do not see much hope that carrying forward with the charges will change anything, so charges are withdrawn.

Informants' views about battering as a social or behavioural problem involving the family were largely directed at the relationship between the husband and wife. Many did not seem to think the battering of a wife had much effect on the children, nor did they think a father's access to his children should be denied because he had beaten their mother. Unless the woman can demonstrate extreme fear of any ongoing contact between the father and the family, or unless the husband has also beaten the children, reasonable access to the children will be granted to the man. In some cases the judge will order supervised access.

The relationship between husband and wife was again described by many informants as a mitigating factor in sentencing. As a result, unless court staff experienced ongoing violence from the husband, or unless there was a continued alcohol or drug problem, the most common dispositions described by informants were suspended sentence with probation, or a conditional discharge. Similarly, when a batterer breaches a term of his sentence the onus is on the wife to lay the charges again, and to prove she did not encourage him to breach.

Finally, some informants described an ultimate "catch-22" for battered women who did persist in seeking legal retribution for their husbands' battering. Such women are apparently viewed by some as neurotic and vindictive. And women who find it difficult to proceed with charges are also seen as neurotic or as passive victims.

### III.B.6. Summary of current legal practice

As noted earlier, a review of current legal practice regarding wife battering was included in our work as part of the process of developing a model of protection for battered women. This was done because although it is clear that application of the law can, and does, vary, we wanted to identify base-line policies and practices of the criminal justice system. The work of bridging gaps in practice requires knowledge of the size and shape of the gaps in question.

There was no misinformation noted by our informants as they reviewed the model of current legal practice presented to them in the interviews.

Many informants offered insights and perspectives on their work that was useful to us as we sought to clarify various procedures. As well, informants made comments that were critical of different parts of the model, invariably about areas other than their own work jurisdiction. Criminal and family court personnel were critical of practices utilized in each other's setting; police were irritated with actions of other parts of the criminal justice system; justices of the peace did not always approve of judges' decisions; judges were critical of lawyers' actions in court, and so on. In fact, criticism of the criminal justice system by its own members was rampant throughout our interviews, their comments often bordering on distrust and dislike.

Before moving on to the next section of this chapter, where we look at a model for providing protection for battered women, we shall summarize our findings thus far. Our analysis of current practices regarding battered women began with police, went on to review all aspects of laying and proceeding with charges, and concluded with sentencing and enforcement of breaches.

Police clarified that non-arrest is the most common present practice in wife battering cases. For those police trained at the B.C. Police Academy (all B.C. police officers other than R.C.M.P.) methods of defusing wife battering situations, rather than arrest, are a primary focus of the crisis intervention curriculum. Many officers seek to protect a battered woman by suggesting she leave the home; or, if the husband is intoxicated in a public place, police will often arrest and hold him in the drunk tank for several hours.

Police are called to investigate a range of assault cases varying from common assault to attempted murder. They question why some women stay in these relationships and believe women often abdicate their responsibility by not pressing charges, or by withdrawing charges at a later time.

Police comments reveal a lack of knowledge about ongoing court practices regarding wife battering. Some, for example, were not aware that most cases of wife battering were diverted to family court. As well, there was clear indication that police themselves are often frustrated by the difficulties and delays they currently encounter in the justice system. "The way things used to happen" was often the introductory phrase to an incident or story about how police were able

to deal more effectively with batterers in times past.

Present police practices arise out of policy and attitudes. The most recent nation-wide policy developments have encouraged the screening out of family disputes from the criminal process. Part of this process has included teaching crisis intervention skills to police and encouraging non-arrest of batterers. Police attitudes towards wife battering are, by and large, based on the view that what goes on between people in a family is private, and most certainly different from assaults between strangers. In this sense, police are no different from any other part of the justice system - and the health and social services systems, too. The de-criminalization of wife battering, and the belief in the sanctity of the home are key issues in explaining present practice, and as such, demand re-examination.

Unravelling the process of laying charges in wife battering was an important next step in this section of the study. The issues involved in laying a charge are many. From locating the police report, to convincing the justice of the peace of the facts, to assuring court staff she will not withdraw charges, to producing evidence of bruises and other injuries, the onus is on the woman to make the case. During this process she receives varying degrees of support from family court staff and is likely to endure further threats or beatings from her husband. Informants said warrants for arrest of the husband were issued in about two thirds of the cases, and that bail terms were usually granted immediately. Often the husband would be ordered not to have contact with his wife for the time between the bail hearing and the trial.

Unless a couple is divorcing, has been living common-law for less than a year, or the violence is severe enough to remove it from family court jurisdiction, informants said wife assault cases are dealt with in the family court division of the B.C. provincial court rather than in criminal court. Some informants said the counselling and support services were reasons why family court was the best place for handling wife battering charges. Others said these very services served to encourage reconciliation and to de-criminalize the assault that had brought the woman to seek protection under the law. Informants' descriptions of the processes - of accepting the information, laying a charge, proceeding with a warrant or summons, holding a bail hearing et cetera - all reveal that the most consistent effort of family court

is to work towards protecting, if possible, the relationship between the woman and her batterer.

Informants discussed at length their views on the withdrawal of charges by battered women. Even though family court informants described efforts to encourage women to consider the ramifications of laying charges, most saw the withdrawal of these charges as a bad move by battered women. The contradiction here is in working to keep the family together, yet blaming women when they do withdraw charges. Unfortunately, the possibility of the woman withdrawing charges is often used as a reason for not accepting charges in the first place.

Informants also stated that all battered women come to the criminal justice system for help in making the beatings stop. Some women hope for an eventual return to a non-battering relationship with their husbands. In these cases, the dilemma of court staff is to balance conciliation with legal action designed to deter the husband from further assaulting his wife. This is not an easy task.

Probation with a suspended sentence, or a conditional discharge were the most common sentencing decisions described by informants. Again, the possibility of reconciliation was raised by informants as a reason why most wife-beaters were not sentenced to any kind of jail term. Provocation in the battering on the part of the woman was described as a mitigating factor in the sentencing process.

If a husband breaches his sentence, which was stated as occurring in about one out of every 20 cases, the wife has to inform the probation officer or police. The possibility of any acquiescence in the breach on the part of the woman is examined before the breach charge is accepted. Offering protection to women in cases of breach was described as problematic by many informants. Police stated they were seldom sure if the breach was legitimate, and had problems ascertaining the current status of any restraining order the woman might show to them. Husbands who breached without further excessive violence were generally told by the courts not to do it again or they would be jailed.

Final comments made by informants suggested that women who feel strongly about getting legal protection for themselves are viewed as mean or neurotic. Conversely, women who withdraw charges, or continue to live with their husbands, are seen as passive victims.

## III.C. A PROPOSED MODEL FOR PROVIDING LEGAL PROTECTION FOR BATTERED WOMEN

### III.C.1. Description and derivation of model

In developing the proposed protection model (see chart on page 131 ) the first focus was to look at the model of current practice and criticisms of it by battered women and advocates familiar with legal issues in wife battering. A useful background in preparing the protection model was the Police Foundation Study, Domestic Violence and the Police: Studies in Detroit and Kansas City. A key element for this study was their finding that battering recurs and escalates in severity over time. This, and the fact that the legal consultant developing the model had clients who had been battered at least several times prior to their seeking out a lawyer, provided an impetus for designing a model that actively sought early and real protection from further violence for battered women.

Working from the assumption and experience that in most cases the use of discretion operates against affording protection, discretion was eliminated from the model as often as possible. Therefore, included in the model are a mandatory response from police officers, mandatory arrest in certain situations by police officers, elimination of the discretion to lay charges by the justice of the peace, and required mandatory minimum sentences for battering.

When statute laws were considered, the Criminal Code was reviewed to discover areas where analogous requirements for other offenders existed. By doing this, the model tends to present methods for dealing with batterers that are already known in our present system. For instance, there is an analogy between batterers and drunk drivers as both representing dangers to society, so the suggestions made for penalties for batterers are similar to those for drunken driving. Similarly, for bail hearing, the process used to determine whether drug offenders should be released on bail was reviewed and the criteria for release extrapolated and applied to batterers.

In some cases, such as the concept of a central registry, existing systems - in this case C.P.I.C. (Central Police Information Centre) - were extended to cover those types of orders most frequently breached by

## FIGURE II

### A MODEL FOR PROVIDING PROTECTION FOR BATTERED WOMEN

Call to Police Station

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Mandatory Response from Police (no discretion in dispatcher to ignore call; all calls to be answered on a priority basis by police officers)

↓

Central Registry of restraining orders, convictions, peace bonds, no contact orders, information on circumstances of previous charges

↓

**Mandatory Arrest** by Police Officers in cases where there is:

(1) Any bodily harm to the spouse (including bruises)
and (2) The situation is likely to re-occur
or (3) There are any prior convictions of the spouse for assault, any current restraining orders, no contact orders, peace bonds or any probation orders

↓

**Show Cause Bail Hearing**

1. Onus on accused to show that violence not likely to re-occur - counselling option for first offender
2. Accused must show that he is likely to appear for trial
3. No bail for second charges or for spouses who violate civil restraining orders, no contact orders, peace bonds or terms of conditional discharges or breach of any probation orders

↓

**Trial**

- Charge tried criminally - no diversion to Family Court
- Charge of assault bodily harm whenever there are bruises, black eyes or any other forms of bodily harm → **Mandatory minimum prison terms for bodily harm** (no conditional discharges):
  - First Offence - 30 days
  - Second Offence - 90 days
  - Third Offence - 180 days
- Eliminate peace bond in battering situations
- Minimum and Graduated Sentencing (no conditional discharges)

↓

**Minimum Sentences for Common Assault:**

First Offence - fine and probation terms (no contact order, etc.)
Second Offence - 30 days imprisonment and probation terms
Third Offence - greater imprisonment and probation terms

**Breach of Probation**

1. Mandatory arrest
2. No bail until trial

**Non-Arrest Option** (only in cases not covered by Mandatory Arrest policy)

↓

Police officers to advise woman of her rights to civil and criminal remedies, of legal aid offices, Transition House number, and how and where to lay a charge

↓

Unannounced check backs by Police

↓

J.P. no discretion - Justice of the Peace must issue process

↓

Bail terms set (including no contact order, exclusive possession of matrimonial home to victimized spouse

↓

Bail terms recorded on Central Registry

↓

If bail terms broken, imprisonment until trial

batterers. This was done in response to consistent reports from battered women, lawyers and police about police difficulties in dealing with or responding to breaches of orders.

In terms of existing law, the most "revolutionary" aspects of the model deal with the imposition of bail terms on the batterer when there has been no warrant issued, and mandatory detainment until trial under certain circumstances. Imposition of bail terms was included because interview pre-tests indicated that since the Polglase decision, judges in family court needed a mechanism for dispensing civil remedies now reserved for Supreme Court. The provision for mandatory detainment was included because it seemed clear enough that anyone who had flaunted a previous court order should be detained. Moreover, in many situations it was usual for judges to detain the accused if he had committed a breach of a previous order - it was simply uncommon in family cases.

Review and discussion of the proposed model of legal protection took place in the final third sector of all interviews with informants from the criminal justice system. Informants were encouraged to comment on the general aspects of the model, perceived effects on protection for battered women and deterrence for batterers, and on their own perceptions of the model's impact on their work, and the work of others in the legal system.

### III.C.2. Police practice

In this section, we examine those aspects of A model for providing protection for battered women that most directly relate to police practice. These are: the proposals regarding mandatory response by police; a central registry of restraining orders, previous charges and so on; mandatory arrest by police officers in certain circumstances; and a non-arrest option for cases not covered by the model's mandatory arrest policy.

#### (a) Mandatory response

The model proposes that when a call regarding wife assault is received by a police telephone operator, response should be mandatory. The model stipulates that the dispatcher would not ignore the call, but rather that all such calls would be given priority for response by police officers.

The majority of our informants who commented on the mandatory response

proposal, favoured it. Their comments were not extensive but several did suggest that insufficient police manpower would make such a policy difficult to implement. In addition, one informant, who works closely with the police, said: "The police might have a problem with mandatory response [because of] some of the 'grey areas,'" noting that for police telephone operators receiving calls, "It's not always clear what's happening." This informant's comments underline the importance of refining the current system used by police operators in categorizing calls and setting priorities, which was discussed at length in Section III.B.3(a) of this chapter.

A further problem with mandatory response was identified by a former Car 86 worker who suggested that the police would not give priority to wife assault calls "because you [police] can arrest in a B & E [break-in and entry] for example, you can do something. But you can't in a battering case." This comment points to the need to make connections between the various aspects of police practice and the constraints under which police operate. As noted earlier, the laws regarding assault are not considered by police officers and officials to be applicable in many cases of wife assault. This can result in the view, as the informant quoted above supports, that police can do little in such cases, which effectively reduces the priority for response to wife assault calls.

Proposals for more effective interpretation of the laws, in terms of ensuring protection for battered women, are examined in part (c) of this section. However, assuming that there is acceptance of the proposals regarding interpretation of the law and attendant changes in police practice, problems remain. A mandatory response policy would require sufficient police manpower to handle the calls. And methods of obtaining enough and accurate information on calls to police must be developed if wife assault calls are to be identified and given priority by police operators and dispatchers. According to our informants' comments on current police response practice, one obvious area requiring change is the use by police of the imprecise term "domestic/family disputes," which serves to obfuscate the nature of the problem being reported.

In spite of the difficulties noted above, it should be reiterated that the majority of our informants considered a mandatory response policy to be desireable.

(b) Central registry

The model for providing protection for battered women proposed that there be a central registry of restraining orders, convictions, peace bonds, no contact orders, and information on the circumstances of previous charges. The central registry would then be a source of information for police officers in responding to wife assault calls.

Informants' comments on the central registry proposal were positive. One police officer's remarks indicate that the proposal is feasible, since the "conditions of no contact...and probation orders" are currently on the central police information centre's computer (CPIC). He said that with regard to including additional information, "It shouldn't be hard to get that happening." However, this informant also noted the Vancouver police department's policy prohibits police radio broadcasts of the previous charges of a person under police investigation. Implementation of the central registry proposal would necessitate changing this policy.

We must note at this point that informants gave varying responses to the interviewer when asked "What's on CPIC?" This lack of accurate knowledge should be of some concern to people intending to use this information service. For the record, we have listed all the informants' responses to the CPIC question in the chart on page 135 .

In light of the concerns informants registered regarding the lack of information available to police officers under current practices, it is not surprising that the central registry proposal was viewed favourably.

A major benefit of the proposal which informants identified concerned improved police efficiency and safety in dealing with wife-battering calls. One police officer said that with the availability of information on restraining orders, previous charges, et cetera, "We'd be able to know what we're doing and where we're going into. It's getting to be a wilderness out here." Another informant who has worked closely with the police for several years concurred, and outlined his view of the advantages of the central registry proposal:

> The more information the police have, the better. On the way to the scene of a crime, the police officer should have as much information as possible. The more times police have been to that house, the more they feel they can handle the situation. Police need to know about any previous history of violence for their own safety as well as what they should do to clear the call.

FIGURE III

INFORMATION REGARDING MATERIAL ON CPIC FROM LEGAL INFORMANTS

- The only way these charges would get on CPIC is where an arrest is involved.

- In Vancouver, our system is that every adult person who is the subject of probation is on CPIC but that's peculiar to Vancouver. It doesn't exist elsewhere in B.C.

- Common law peace bonds won't appear on CPIC as it's not a conviction or an adjudication at all.

- Civil no entry orders are not on CPIC now.

- If there are peace bonds or criminal restraining orders, they're on CPIC now.

- Everyone that's released on any kind of no contact order is on CPIC.

- We talked about having civil restraining orders on CPIC but family court counsellors objected to including them as they felt that 'civil' orders should not be on a 'criminal' information gathering system. So the compromise is the fact that if there's conduct which is complained about that's criminal, it'll now get on CPIC.

- All recent probation orders and undertakings are put into the police computer. This has been happening for the last two to three months. [interview took place in August 1981].

- We have all of our [criminal court] orders on CPIC but family court orders are not on CPIC. From here, we include the acussed's tendency to be violent, nature of the charge he's facing and terms of conditions of his release. But this is only true at 222.

- For a while there was a move at family court to put all bail orders on CPIC. I don't know whether they're on or not. I also think that civil restraining orders should be on.

- Lots of times we can find out the conditions of a no contact order. There may just be probation orders in there. We never get information on previous charges, we're not allowed to broadcast on the air. Vancouver's the only department who has that policy; the rationale is that there could be an inaccurate report of the record.

- Everything but civil matters appear.

- Presently on CPIC there's convictions and outstanding charges in the province where there are warrants outstanding.

- As far as I know, all bail terms are recorded on CPIC. If they're not, they should be.

- We would do a CPIC check on most calls. You know, the orders can be put on CPIC, but someone has to be willing to put them on. Lawyers don't like to because the orders change so often.

In addition, a central registry of pertinent information, if it is kept up-to-date, would solve the problem that one informant, a former family court prosecutor, had observed in current police practice. The informant reported being told that "on a list of priorities, restraining orders and their enforcement would be last," because the police would not know whether such orders were current. The former prosecutor's comments make clear the consequences for a battered woman who has succeeded in obtaining a restraining order against her husband:

> The husband would say that there was a recision of the restraining order; the wife would say that that was a lie; the police would just shrug their shoulders and leave.

And the restraining order would be rendered useless.

It is clear from our informants' comments that a central registry would help to improve protection for battered women by increasing the efficiency of police practice. In addition, the safety and confidence of police officers responding to wife assault calls would be enhanced.

(c) Mandatory arrest by police officers

The model for providing protection for battered women contains two provisions regarding police practice at the scene of a wife assault. First we will discuss the proposal for "mandatory arrest by police officers," according to our informants' comments. Next we will review the "non-arrest option."

The model proposes that police officers arrest a batterer in cases where there is:

(1) Any bodily harm to the spouse (including bruises);
and (2) The situation is likely to recur;
or (3) There are any prior convictions of the spouse for assault, any current restraining orders, no contact orders, peace bonds or any probation orders.

It should be noted that this proposal is not based on any change in the Criminal Code regarding assault but rather a different interpretation of the existing law from the one on which current police and legal practice is based.

The proposal requires that the definition of bodily harm be interpreted to include such relatively "minor" harm as bruises - as opposed to the

current practice of interpreting bodily harm to mean "serious" or "very severe" bodily harm. Such criteria as the number of stitches a victim must receive to close a wound or injuries severe enough to warrant hospitalization would be rescinded by this proposal. Furthermore, the current police policy, noted earlier, that "police can't arrest unless they witness an assault or it is very severe," would be revised. Point (2) of the proposal incorporates the "breach of the peace" consideration police officers cited in their comments on current practice. And point (3) requires that police arrest for breach of restraining orders, probation terms, et cetera, and if the batterer has previously been convicted of assault. In fact, these conditions could all be interpreted as indications that "the situation is likely to recur."

Criminal justice system informants who commented were divided in their assessment of the mandatory arrest proposal. Many were strongly in favour because of the clarity of the proposal. Others were supportive of the intent of the proposal but qualified their support with concerns about what one termed "technicalities." And several informants opposed the proposal for a variety of reasons ranging from their views of battered women's behaviour to "civil liberties arguments."

Informants saw major benefits of the mandatory arrest proposal accruing to battered women themselves and to police officers dealing with wife assault cases. Many informants favoured the policy because it would indicate clearly to a batterer that wife assault is, in fact, a crime. A former family court judge pointed out the deterrent effect of quick punishment:

> The most effective means of fighting crime is to be caught in the act and apprehended then and there. The only thing that prevents crime is the fear of being punished. It's best to take the guy into custody right out of his home. Police can seem devastating. It's good for deterrence even if the guy is kept in jail overnight. Nothing is better for deterring subsequent conduct than having the police arrest you.

Similarly, a Supreme Court judge suggested that a mandatory arrest policy would prevent further assaults:

> I suspect if the man were arrested once or twice, he would stop harassing his wife...the old retribution is not so bad. The best punishment is to arrest and toss the guy in the bucket. The next morning he could be out...a short, sharp approach - one night in jail would be the best eye-opener these guys could have.

A psychologist, responsible for police training, said that "more arrests are required" and he had "no problem" with the proposal, "given studies that show the abuser will inevitably continue to beat up his family." However, he did suggest that it may be best as a policy for second offenders.

Other informants considered the proposal to be beneficial to women in the immediate crisis situation and that women would prefer the police to lay charges against their husbands. As one family court counsellor said:

> It would take the load off the woman. A woman feels guilty. It would lessen her fear of retribution. The husband doesn't know what policemen laid the charge. Many women say, 'Let the police or the probation officer lay the charge.'

In light of the difficulties battered women encounter in laying charges and in dealing with their husbands' retaliatory threats and actions, it is not surprising the women we interviewed agreed with the mandatory arrest proposal.

Furthermore, as one informant explained, the mandatory arrest policy (coupled with the non-arrest option) would provide police with clearer guidelines on which to base their actions:

> This would make the policeman's job a lot easier, because they're confused. It's not clear-cut. They're not thrilled in the first place about these calls, but it would be of benefit if there were two options.

Support for the proposal, with reservations, was indicated by several informants: some suggested the criteria were not tight enough while others favoured more flexibility. One former Car 86 worker raised two concerns. Regarding the inclusion of bruises as an indication of bodily harm, this informant noted, "You don't see the bruises right away (i.e. immediately after an assault), or even welts or redness, so that one may not be able to be used a lot." On the second point, "whether or not the situation is likely to recur is a judgement call and if the guy is slick and says 'yes sir, no sir' to the police, then the police's judgement will be to believe the guy." While cautioning that the first two points could be dangerous in that "they...might not be enough," the informant concluded that the points together "could form a combination of risk factors that could lead to arrest."

Other informants, including a family court judge and family court counsellor,

preferred restricting a mandatory arrest policy to second offences and/or breaches of orders. And a psychologist working with the police supported an arrest policy, noting that the batterer may not necessarily be imprisoned for a first offence, "but the first common assault is a clearcut sign that there may be more problems."

Opposition to the proposal for mandatory arrest by police officers was based on the view, reported in Section III.B. of this chapter, that battered women either don't want their husbands charged or, if they do initially, will later change their minds.

A family court justice of the peace suggested it would be preferable for the woman to lay the assault charge herself so she would know what she was "getting into." He assumed that "women don't want their husbands to go to jail.... If the police laid the charges instead, the Crown wouldn't have a case because the woman would be an uncooperative witness." A family court prosecutor's comments support this concern, pointing to past experience in the rare cases where the police "laid the information, the woman was down here screaming 'I didn't ask you to lay the charge.'" Another informant, a criminal court judge, was concerned that a mandatory arrest policy would be open to abuse by women and that the abuses could far outweigh the benefits of the policy. And a police officer voiced skepticism about such a policy saying, "You have to see that women want to be protected"; the implication being that some women do not. Although it is clear there have been and will no doubt continue to be cases in which women will change their minds and oppose their husbands being charged, interviews with battered women make it equally clear that they support mandatory arrest. It should be noted here that the proposed arrest policy does prohibit the dropping of charges. It also establishes a different basis of negotiation: one that affords the possibility of more protection for a battered woman and a greater possibility of reprimand, deterrence, or punishment for a batterer.

Concerns for batterers and for the chance that their punishment may be unfair were registered by the police officers we interviewed. One questioned using bruises as an indicator of bodily harm:

> Bruises are okay if they're the result of a real hit. But if he grabbed her and shook her, or pushed her, it's hardly an indictable criminal offence.

A second officer argued that "it would lead to a breakdown in the marriage if he [a batterer] got charged and put away." His argument was apparently based on the assumption that (contrary to other informants' views and experience and recent research) wife assault is an isolated event not likely to be repeated:

> What happens in the case of a man who snaps once; hits her. You come. It's all mandatory: he goes to jail for 30 days on something he's likely never to do again.

A criminal court prosecutor weighed the implications for battered women and batterers of the proposed mandatory arrest policy and gave precedence to an accused's civil liberties:

> While a more liberal arrest policy might be more helpful to battered women, I like the Bail Reform Act and the fact that people can be at liberty until their trial.

This informant also pointed out the constraints of his position, which influence his views, stating: "My job in the criminal justice system is to deal with criminals, not victims." A family court judge found the proposed arrest policy unrealistic given the present tenor of the Criminal Code. Similarly, police officers cited increased public awareness of civil liberties arguments as a deterrent to previous police practices of dealing with batterers.

Clearly, the rights of an accused and civil liberties are important factors in policy decisions. However, the rights of victims of crimes - and, in particular, battered women's right to protection - are additional factors that must be included in decision-making.

A further aspect of a mandatory arrest policy on which informants commented is arrest for breach of orders. One police officer noted that the proposal does not represent a change from current practice since, "in violations of a restraining order, we can scoop him now." All informants who commented on breaches of orders agreed that the police would <u>not</u> respond to a breach of a no contact order if the woman involved had initiated or acquiesced in the contact. However, as noted earlier, two judges pointed out that police responsiveness to breaches is influenced, justifiably, by the court's willingness to enforce its own orders. A criminal court judge explained how the courts and police interact:

> Police will act if they are backed up by the courts.... If police feel that if a guy is picked up for a breach, the judge will simply slap the guy on the wrist and release him, the police have better things to do than enforce that judge's orders. Therefore, the attitude of the court itself determines the police response.

The interconnection between the police and the judiciary in terms of both policy and practice was discussed earlier in this chapter, with regard to current police practice. The judges' comments add further weight to the importance of looking at the larger picture of the entire criminal justice system in determining or understanding police policy and practice. A psychologist responsible for police training, likewise emphasized this point. He indicated that the proposal for mandatory arrest by police officers could be implemented and its clarity might even be welcomed by police, but the policy cannot be established in isolation:

> We can't teach attitudes but we can teach procedures. You see a bruise on an eye, you make an arrest. If the prosecution will proceed and the judiciary will sentence, the police will comply. The police will only act effectively if the rest of the system carries through. The police would like to eliminate the lack of clarity. Let the judiciary sentence and the police will act better.

(d) Non-arrest option

The model proposed that, in those cases not covered by the mandatory arrest policy, police officers would advise a battered woman of her rights to civil and criminal remedies, legal aid offices and transition houses, and explain how and where to lay a charge. In addition, police would make unannounced check-backs to the woman's location in case a subsequent assault occurred.

One police officer we interviewed said that the police do tell women of the resources available to help them and that the appropriate telephone numbers are provided. A former Car 86 worker concurred. However, one informant who has worked closely with the police for several years suggested improvement is needed in this area from the point of view of battered women as well as police officers:

> Lots of women don't have proper information about laying charges and support services. A card is a good idea. It would have to be in a form so that on a busy night, the police could give the woman the card and get on the road. There is no support from the police supervisor to spend 15 minutes advising a woman.

The proposal for the unannounced check-backs received a mixed reaction. The majority of informants from the legal system favoured the idea. One informant said it was "great" but "it would come down to a manpower issue" which Car 86 might solve. A former worker on a Car 86 team said that it was, in fact, customary for the team to "drive by and listen" at the address of a previous assault call. A family court counsellor stated that check-backs would be beneficial if the husband and wife were still together or if there was a possibility the husband might return to the home.

Some informants offered negative assessments of the proposal. One police officer considered it an unrealistic and disagreeable prospect noting, however, that it is current practice for some offences:

> There's a one per cent chance the police would do it. Nobody likes going back. It's dangerous, and unpleasant. They have to do it now for impaired drivers. The chances of being free to do it are minimal. The motivation and the opportunity are going to run very low.

A second officer's comments are similar. He said that he has actually made unannounced check-backs on two occasions and received mixed responses:

> They don't want to see you 'cause they're embarrassed in the first place, but also happy to see a guy take time to see how everything's going.

This officer also stated his concern that "most people would feel this is a violation of their civil liberties, there's no right to pester them when we're not called." A former family court judge reiterated the civil liberties concern.

In summary, practical administrative improvements in police practice to afford protection for battered women can be achieved through the implementation of mandatory response to wife assault calls; a central registry of restraining orders, bail terms, et cetera; and a mandatory

arrest policy with a non-arrest option.

It is necessary to refine the current system used by the police to categorize calls and set priorities for response to wife assault calls. This requires the development of methods to enable police telephone operators and dispatchers to obtain, and pass on to responding officers, enough and accurate information on the nature of an assault. The use of specific terms such as wife assault as opposed to the current term "domestic/family dispute" would be a simple, effective beginning. It is clear that manpower limitations necessitate priorities be set regarding calls. First priority for response should be given to life-threatening situations - which some informants maintain is the current practice. The majority of wife assault cases would thus be considered level one priority.

Establishment and use of a central registry of restraining orders, bail terms, et cetera, would not only improve the protection afforded to battered women, but would enhance the safety and confidence of the police officers responding to wife assault calls. And it would also improve the credibility of the courts and help ensure that court orders were respected.

The proposed mandatory arrest policy provides, according to our informants, effective and clear guidelines for police and a combination of risk factors to assist police in determining the appropriate action required in wife assault cases. This policy would not require legislative change. It would establish a new basis of negotiation in wife assault cases that affords greater possibility of protection for battered women and a greater possibility of deterrence and/or restrictions on the violent behaviour of batterers.

The non-arrest option included in the mandatory arrest policy would simply formalize and extend some aspects of current police practice. As several of our informants pointed out, advising battered women of their rights, options and resources is currently considered appropriate police practice. Unannounced check-backs is a more limited feature of current police response which could and should be extended. The opposition informants expressed to check-backs focussed on police manpower limitations and civil liberties concerns. However, it must be noted that a mandatory arrest policy would reduce considerably the number of cases requiring unannounced check-backs and thus addresses, in part, the concern about inadequate manpower. With regard to the civil liberties concern, it is clear from

our review of current police and legal practice that an imbalance exists in favour of the rights of an accused batterer. It is necessary to redress this imbalance which gives undue precedence to the accused's rights over battered women's rights to be protected against the crime of wife assault.

### III.C.3. Aspects of non-arrest option relating to justice of the peace and bail terms

#### (a) Removal of discretion from the justice of the peace

Under Section 455 of the Criminal Code, when a person believes on reasonable and probable grounds that an indictable offence has been committed, the justice of the peace must take an "information" and subsequently lay a charge. However, in the case of a summary offence it is left to the justice of the peace's discretion as to whether to receive the "information." In the protection model, it is proposed that this discretion be removed so that the J.P. must issue "process."

There were three responses to this suggestion from informants. There were those who wanted discretion to continue, those who wanted discretion eliminated, and those who wanted the justice of the peace's present policy to tighten up so that discretion was not so much of an issue.

Informants wanting justice of the peace discretion to continue were very clear about their reasons. "Leave that discretion" said one family court counsellor, "it works. If the woman wants to lay the charge it will almost always likely be laid - as long as there's a prima facie case, even for one slap." A justice of the peace at family court commented that if there was no discretion "we'd have to rubber stamp everything that comes in the door." This justice of the peace said the use of a writ of mandamus against the J.P. (a command by order or writ, obtained through a lawyer, requiring the performance of a particular duty - such as the accepting of an "information" by a justice of the peace) takes care of situations where a person is dissatisfied with a J.P.'s decision. A family court judge also remarked that the justice of the peace is "not acting in the woman's interests - he acts according to the law" and said the discretion permits a balancing to occur and "is the greatest safeguard in the system."

Several informants noted that justice of the peace discretion was a

problem but believed that it shouldn't necessarily be removed. A former family court judge stated justices of the peace should not be less encouraging to battered women than to others, but also noted that in family matters "there's always the possibility there was no fight, so the J.P. could scrutinize the complaint more carefully."

A family lawyer was adamant in stating justices of the peace should have no discretion in wife battering cases because "J.P.s are not trained to make those decisions" and noted that in other cases the police officer makes the decision to lay the charge and "the J.P. invariably accepts that." And a family court judge admitted that cutting out discretion would involve tremendous changes in the Criminal Code but did not believe there would be a problem of abuse of the system by women if discretion were removed.

(b) Bail terms on summons

In current practice we see that only when a warrant for arrest is issued can specific terms (such as no contact orders) be placed on the accused while he is on bail prior to trial. In cases where a summons is issued requiring a person to appear in court on a certain day, there is at present no possibility of judges setting out conditions or terms of behaviour that must be met by the man until the trial date. The protection model suggests that judges be able to impose such bail terms even if the assault has not resulted in the man being arrested - in other words, the judge should be able to impose bail terms on a summons.

One informant said he couldn't imagine discretion being exercised in these cases, stating, "Someone will always be worrying about some poor S.O.B. getting screwed out of things when he hasn't been the abuser, especially for exclusive possession of the family home." Another informant, a justice of the peace, admitted there was a vacuum in this area but felt a better response would be to "substantiate to a judge the need to impose a direction without terming that direction part of bail." This of course would not be legally enforceable. And a criminal court judge noted this could already be done procedurally although "you would need a pretty strong case." The judge also said even a person on a summons "is obliged to keep the peace and be of good behaviour."

The majority of informants were very positive about the concept of bail terms on summons. "Effective," "helpful," "marvellous," "a good idea,"

"I agree," were typical responses. One family court judge noted there were often no grounds for arrest "but the need for a restraining order becomes apparent after the summons has been issued." A criminal court judge noted bail terms on summons would be an asset in protecting women "as the justice of the peace might have missed something when deciding on what process to issue."

(c) Imprisonment until trial when bail terms broken

One of the most controversial aspects of the protection model entailed recommending detention until trial of accused batters who breached bail terms. This change was introduced to the model to provide definite consequences to husbands who breached court orders. As seen in the section on enforcement of breaches in the model of current practice, imprisonment on a breach is used only in cases of very severe assault.

Informants agreeing with the concept of imprisonment for breach of bail terms commented on two problems such action might overcome. The first was the ongoing victimization of the woman by the husband and the criminal justice system. One lawyer said, "She's primarily being victimized by the fact there's no one in the system who is willing to do anything effective about her battering." And another informant involved with police training agreed with the concept of mandatory detention because his experience has been that the husbands ignore the restraining orders and so do the police because they know "the guy needs to commit further crime to get arrested."

A former family court judge said more violence on the part of the accused would cause remand until trial, but said breach of bail terms would not.

Informants opposed to mandatory imprisonment on breach of bail terms stated various reasons for their opposition. Several said family matters should be treated the same as stranger-stranger situations so as to ensure consistency in law, so "if they imprison in stranger-stranger violence, then it's okay for family violence; if not, they shouldn't in family violence." Another informant, a family court counsellor, said there should be no special category for family violence, then qualified that by describing categories of family violence which to her did require different responses: "It's okay to incarcerate where the husband is an alcoholic and

is breaching the order and terrifying the kids...it's no good to arrest where a man has had no contact with the wife but simply breaches by not attending at a shrink or at an alcoholic treatment centre."

A family court justice of the peace said it should be the discretion of the judge to evaluate circumstances of incarceration, especially given the fact that a trial date can be two months away. And a criminal court prosecutor pointed out that alleged murderers may be on bail, adding, "I do not believe that there should be mandatory detainment policy as the wife may have made the initial contact."

These remarks pinpoint critical issues for battered women seeking protection. As we have seen, informants describe family violence as something different from stranger-stranger violence because of the relationship between the parties involved, and therefore suggest the more supportive response, assumed to be at family court, is the appropriate response. Yet when the protection model suggests a firm action be taken to protect battered women from a husband who has breached bail terms set by the court, the response is to insist that stranger-stranger and family violence be treated the same - that there be no special spousal assault provisions. Furthermore, the comments about the length of time until trial and the minimization of a breach (non-attendance at a "shrink") clearly indicate a less serious consideration of wife battering on the part of professionals. Finally, and seemingly always, an informant raises the question of whether or not one can really believe what battered women say.

(d) Show cause bail hearings

In current practice, when a warrant for arrest is issued, the accused will be arrested and taken into custody until a show cause bail hearing takes place - usually a matter of a few hours, sometimes a few days, depending on when the arrest occurred. Usually the husband is let out on bail with some conditions attached, such as no contact or no alcohol terms of bail.

In the protection model three points are introduced at the show cause bail hearing. It is suggested that a reverse onus be placed on the accused - to force him to prove that violence is not likely to recur. The burden of proof is thus placed on the husband rather than on the

prosecutor who currently has to show cause why the husband should or should not be released on bail. A counselling option for first offenders is also introduced in the protection model at this stage. The final point introduced is the concept of no bail for second charges or any breaches of orders.

Again, informants were split on their opinions about the usefulness of the reverse onus, and other points introduced at the show cause bail hearing.

One former criminal court judge was hesitant to change the rules that apply now, noting that the rules have to apply to all crimes of violence. The former judge also said, "I'm astounded at the people who do get out on bail these days," although blame for this was placed partly on the lack of accommodation in prisons. In the end, this informant felt courts should exercise their powers more stringently if they intend to maintain authority.

Informants opposed to reverse onus at the show cause bail hearing said, "Reverse onus doesn't work as it presently is utilized in our code." A Supreme Court judge felt it might work but said, "In family matters, who has the onus is not too important." A criminal court crown prosecutor also said reverse onus situations don't work, "they only determine who will speak first at the hearing."

Those informants in favour of a reverse onus felt it would be good practice for several reasons. Some informants were aware of recurring assaults and felt reverse onus on the accused might stop those from happening. Several informants approved of the counselling option for the first offender but said after the first offence, counselling should not be available as a diversion.

The third point, no bail for second charges et cetera, was also generally approved although informants wanted a trial to occur quickly, and some felt the judge should still be able to exercise discretion. The major concern expressed was over incarceration prior to conviction. One informant said no bail for second offences opened up the possibility of abuse by the wife, noting, "I don't want a person incarcerated on a mere complaint." Another informant said serving time on mandatory weekends would be more effective than no bail at all.

## III.C.4. Procedures and practices in the court

### (a) Criminal court as the forum for wife battering

As we have seen in the family court section of the previous section on current practice, it is general procedure to direct cases of wife battering to family court. Exceptions to this are when the parties involved are divorcing, or when the assault can be charged as a wounding, attempted murder et cetera. The proposed protection model suggests that all charges in wife battering be tried criminally in criminal court - in other words, that there be no diversion or direction to family court. Implicit in this is the view that the apparent de-criminalization that occurs in family court does not afford enough protection to battered women.

Many of our informants work in Vancouver's family court and all of these said family court was the better forum for dealing with wife battering. Reasons for this included: the availability of counselling; more time and support devoted to the victim; and more sensitivity in sentencing on the part of the judges. One justice of the peace asked: "As long as the powers of the judges are the same, what's the difference if the charge is heard in family court or criminal court?" A family court counsellor also noted that family court is a provincial court with the same jurisdiction as any other court, and therefore did not see the necessity of changing the court venue.

A former family court judge said generally family court was the best venue "because family matters are different" but noted that given the Polglase decision, "criminal charges should be heard with the family matters in Supreme Court, all at once." A former family court prosecutor concurred, saying, "I wouldn't send anyone to family court...there is no sense to deal with one issue in family court out of a range of issues."

Other informants who agreed with no diversion of wife battering charges to family court did so on the grounds that criminal court offered more clout to the issue; however they did want more services - such as information about court procedures and resources for battered women - to be made available in criminal court.

(b) Elimination of peace bonds

The protection model suggests the elimination of peace bonds as a remedy in battering situations largely because of dissatisfaction with their effectiveness voiced frequently by battered women and often by police as well. Few informants commented on this aspect of the model. A family court justice of the peace said peace bonds seemed to work in most cases, at least "we don't see too many repeaters." A family court counsellor noted that peace bonds were used only in threatening situations and said, "I think it would be fine to charge common assault for threatening situations." This counsellor said threatening could be "very, very serious, and should be seen as more serious than assault."

(c) Sentencing

The mandatory minimum prison term for assault causing bodily harm was suggested in the protection model to reinforce the seriousness of assault-bodily harm and to delineate more precisely the difference between sentences for common assault and bodily harm. Minimum graduated sentences for common assault are similar to those for drunk driving and were included to provide an increased penalty for continued common assaults.

All informants had considerable comment to make on the subject of sentencing. Over half of the informants interviewed were positive to the protection model suggestions. The rest were negative, or had some further qualifications to add.

Two judges, one from family court and one from criminal court, worried that a minimum penalty would incline judges to fewer convictions - that they would be more apt to acquit. One judge said - and this was echoed by other informants - that special spousal assault provisions would have to be drawn up. Most dissenters felt the judge should have some discretion in sentencing and also felt as this kind of sentencing does not stop drunken driving, why should we expect it to stop wife battering? One family court counsellor said she had serious concerns about the sentencing provisions, "but not because I don't believe these assaults should not be treated more seriously. What you need is more publicity, more public awareness."

A number of informants had concerns about a new assault charge occurring several years after the first one and felt some allowance should be made if there was a long time lapse between assaults. One informant also wondered if the wife would lay the second charge if she knew that on a second charge the husband would go to jail.

A family court justice of the peace was specific in advice given about sentencing, saying of assault-bodily harm: "First offence - leave it up to the judge; second offence - if within 12 months of the first offence - 30 days intermittent; third offence within 12 months of the first - 90 days in jail." For common assault the justice of the peace recommended: "On a first offence, eliminate the fine and leave it to the judge. Second offence, provided a six-month time frame between the offences, give seven days intermittent served on weekends. On the third offence I'd give greater penalty but it would have to be within six months of the first offence."

Another informant said 30 days in jail was too punitive - mandatory counselling and jail on weekends would be more effective. "If they have to have mandatory counselling and weekends in jail then they will see that it is in their best interests to change something in their behaviour."

Supporters of the protection model sentencing provisions agreed with the analogy to drunk driving for sentencing and said it was important that battering husbands be seen as having committed a criminal act. A Supreme Court judge stated: "The men have to be dealt with, after all the man is a criminal; it's the same if you beat up your wife as if you beat up on a neighbour across the fence." One informant felt that mandatory treatment should be added to the second offence because "unless you get some special treatment the violence is likely to re-occur."

(d) Breach of probation

The protection model calls for mandatory arrest and no bail until trial for breach of probation on the common assault sentences. This is obviously designed to offer a firmer and more punitive response to breaches of probation than is generally the case at present.

A Supreme Court judge noted that detention is presently unusual if bail terms are breached but said, "I believe that breaches should be looked at more severely. It's not good enough that the guy says he got drunk and that's why he breached." This judge, when asked about dealing with breaches

said, "Detention for second charges is fine but I would be reluctant to give a detention order for breaches. The next order would be tougher. I'd make him post a surety...I'd therefore get others to lose if he breaches the order again. The other people whose property is on the line will keep him in check."

A family court counsellor said police should follow exactly the same procedure as in any other assault situation, asking, "Will they arrest in stranger-stranger situations for breaches? It shouldn't be better or worse for family violence, just the same." However, a family lawyer said, "I have seen imprisonment until trial occur in stranger-stranger violence," so felt the precedent did exist for similar treatment in family violence breaches.

### III.C.5. General comments on the proposed model

A few informants offered general comments on the proposed protection model. The potential for abuse of the model by the wife was the most derogatory comment, and this was made by only one informant. Another said the model lost effectiveness with its punitive approach, and that weekends in jail would be a better solution.

Another informant said it was much less convoluted than current practice and added: "If you can't get this model's changes then there should be some other changes...I am afraid of the all-or-nothing approach." A former family court prosecutor stated, "presently there is no protection for women," and agreed with the concept of sentencing and arrest as described in the model. And finally, a family lawyer concluded: "Eventually this model will have a partial effect. Generally if this behaviour is severely punished by the law, people will internalize society's disfavour with it. The law can have an effect on attitudes."

### III.C.6. Comments on the model from non-legal professionals

In all interviews with legal, health and social service professionals, the current legal practice and protection model were presented for review and discussion. Health and social service professionals' experience with the criminal justice system and wife battering was based on their own work experience with battered women, as well as general

knowledge. For example, hospital nurses often have to call police to the emergency ward to take photos and a report from a battered woman wishing to lay a charge, so a certain knowledge of police practice is gained from this experience. Similarly, women applying for income assistance at the Ministry of Human Resources are often referred to family court regarding the obtaining of maintenance payments from the husband, so many social workers have developed a working knowledge of court practice and procedures.

One of the critical issues emerging from a comparison of the legal, health and social service practices regarding wife battering is the fact that for the battered woman and those who work with her, these systems, and their problems, do interact. The success, or failure, of many protective actions taken on behalf of battered women impinges on appropriate cooperation between these three systems. A well-informed doctor, for example, will know how to write a complete medical report and will be prepared to appear as an expert witness in court if necessary. A family court counsellor can work closely with a social worker in preparing recommendations for a custody or restraining order; police and social service professionals can liaise regarding their knowledge of ongoing violence against a wife and children in the community.

(a) Response from health professionals

Most health professionals were, of course, unaware of many aspects of the current legal practice in wife battering. "I'm overwhelmed; I didn't know it was like this," said a public health nurse as she looked at the model of current practice. Specific items such as discretion on the part of the justice of the peace, diversion to family court, the emphasis on reconciliation in family court, and the lack of information about court orders on the police computer were often questioned by health informants. Some informants said seeing the model of current practice helped them to understand why battered wives had problems in laying charges - and why they might withdraw those charges.

Health professionals commenting on the proposed model of legal protection were generally positive about the concepts in it. They agreed that police response should be mandatory although some could see economic repercussions in terms of lack of police manpower. The central registry

was seen as a sensible and useful idea. As one doctor said, "There's no point in getting orders if no record is kept of them." One suggestion made was for a mandatory review of names and orders in the registry, and some control over whom this information was given to.

Informants saw mandatory arrest as a good procedure that "takes the matter out of her hands." One person did question whether or not a woman would call the police if she knew there might be mandatory arrest (which would only occur on a repeat assault), but others said, "There is no way a woman won't call - they will call if they know someone will believe them."

All parts of the non-arrest option were praised although there was some question about unannounced check-backs by police. One informant suggested that women work out some agreement with police on this in order to maintain some control. Another person didn't see present police staff as having the time to do unannounced check-backs.

Counselling for batterers should be very specialized, according to one informant - a psychologist. And there was agreement on no further bail for men who violate court-imposed bail terms.

Interestingly enough, health professionals' response to the sentencing provisions was positive. Incarceration for breach of bail terms, breach of probation, assault-bodily harm and second offence common assault were viewed as necessary. One informant said the model would provide protection but "we've got to make sure the courts can deal with it...it's no good to wait four to six months before getting to a trial." Some concern was expressed about a battered woman's economic support during her husband's incarceration, and one informant suggested large fines instead of jail terms, especially for "middle-class" batterers.

Informants did not see any possibility of abuse of this model by battered women. In fact, they felt that because of the protection afforded to battered women, many more such women might be able to carry through charges without withdrawal.

Several informants talked about the need for protection for middle-class women. They saw these women as tending to prefer civil remedies rather than criminal charges, and were concerned that these wives receive protection in the form of exclusive possession of the home, and enough support to make mortgage payments and become involved in skills upgrading for future employment.

In summary, the proposed protection model was seen as a positive response to the present legal problems with wife battering. Informants said it was important for the criminal justice system to take decisions about arrest out of the hands of the battered woman and to put them into the hands of the state. Further, there was agreement that the batterer should be viewed as a person who had committed a crime. Punishment and rehabilitation should be designed on that premise. These views arose directly from health professionals' own work with battered women, many of whom have not received protection or have chosen not to seek legal redress because of the difficulties involved.

Many of these professionals see battered women regularly and repeatedly in their office, clinic, and emergency ward. They do not see the help they can offer as being enough, nor do they think battered women should have to accept anything less than the full and adequate protection of the law.

(b) Response from social service professionals

Social service professionals were generally familiar with some of the problems battered women have with the law. One informant remarked: "It is not unusual for us to be involved where there has been a [child] protection complaint and also involvement by the police because of wife battering." Ministry of Human Resources staff often work closely with police - Car 86 and police liaison workers are examples of this.

Just over half of the social service informants agreed with the points made in the legal protection model. The rest preferred to see current practice continued and offered some suggestions for improvements.

Concerns expressed about the proposed protection model were based on feelings that the model is punitive, criminally-oriented, attempts an overly legalistic solution to what is thought to be a personal problem, takes responsibility for action out of the woman's hands, and is not feasible in terms of present resources of the criminal justice system. Those informants favouring continuation of current practice said it allows "more for family circumstances...more for the realities of complicated family problems." Most informants did express surprise at the lack of court order information on the police computer, and all agreed with the idea of a central registry.

The major critique made of the protection model by dissenters was of

the way it seemed to take responsibility for laying charges out of the hands of the woman who had been beaten. One informant saw the protection model as an extension of the violence problem in that it "calls for the state to do violence to the man." Suggested improvements included: compulsory counselling for people who call police a second time; social and paralegal workers to be made available to the battered women at the time of crisis intervention; the setting up of a central registry; and that a woman post a $500 bond when a restraining order is granted and forfeit this if she lets the husband back in the home.

Informants supportive of the protection model favoured it precisely because of the mandatory arrest policy. One social worker said, "It shouldn't be her decision or choice to make. I'm tired of hearing about his rights. That's part of our problem and that's why so many men are getting off. We really have to look at whether a person has a right to be violent." One informant offered the comment that "civil rights people will defeat the mandatory arrest concept."

Another social worker was supportive of the protection model because "if things worked this way we social workers would have more time to help her." A district supervisor compared the protection model to the Family and Child Services Act in that the model proposes the abuser be removed - just as the act does in case of child abuse. The informant said, "Having the potential to do this is very useful...it's there for children; I don't know why it can't be there for women." This person also cautioned that the protection model, like the GAIN Act, would require much regulation and might allow people to use the regulations as a barrier to offering help.

Informants supportive of the model had no complaint about sentencing provisions, bail terms, and removal of discretion for the justice of the peace. As one informant said, "The only thing wrong with the protection model is that it is not in place right now."

## III.C.7. Summary of a model for providing legal protection for battered women

The model for providing protection allowed informants to view police and court practices as a whole. All informants gave thoughtful and animated responses to the model, and appreciated the opportunity to consider changes suggested in areas outside their own work jurisdiction

As we have seen in the previous section, health professionals were generally positive about the model. Social services staff were also cognizant of the problems battered women have in seeking protection. However, only half of the social service informants chose to use the proposed model as a basis for change - the rest offered various suggestions for improving parts of current practice. Their negative concerns were based on a belief that the model was too punitive and legalistic for what they perceive as the personal family problem of wife battering.

Five specific areas of the model drew wide and solid support from legal informants. These were: mandatory response from police; the central registry; the mandatory arrest (with criteria); all parts of the non-arrest option except for the removal of discretion from the justice of the peace; and the show cause bail hearing.

Informants were evenly split over the suggestions of having all wife assault cases heard in criminal court, with the negative responses based on the knowledge that family court presently offers more appropriate support to the accused and the victim.

Qualified to outright support for the suggestion of minimum and graduated sentencing was received from the vast majority of informants. Some offered variations and more specific conditions under which such sentences could be imposed.

This degree of general support offered by informants for the proposed model of protection, and the willingness to entertain at least some change in the current practice, is a positive indication of a readiness to consider more effective ways of working to protect battered women. Although some informants were entrenched in their opposition to various parts of the model, the overall sense from informants is one of a need for change. Hopefully these changes will not only protect battered women, but will allow the criminal justice system to work more effectively with the difficult problem of wife battering.

# CHAPTER FOUR

## SOCIAL SERVICE SYSTEM

"IF SOCIAL WORKERS AND OTHER MEMBERS OF HELPING PROFESSIONS ARE TO PROVIDE ASSISTANCE TO BATTERED WOMEN,...THEY MUST BEGIN TO PERCEIVE FAMILIES AS RELATIONSHIPS OF POWER INVOLVING, AT TIMES, THE USE OF SYSTEMATIC FORCE AGAINST WOMEN TO ACHIEVE THEIR SUBORDINATION AND CHASTISEMENT. ADOPTING THIS PERSPECTIVE WILL TAKE THEM BEYOND THE USUAL EFFORTS TO SEEK BLAME OR CAUSE IN THE VICTIM'S BEHAVIOUR AND WILL LEAD TO A FORM OF RESPONSE CLOSER TO THAT OF THE ADVOCATE..."

(R. Emerson Dobash and Russell Dobash, Violence Against Wives, 1979, p.235)

## CHAPTER FOUR - SOCIAL SERVICE SYSTEM

### IV.A. INTRODUCTION

The model of current practice as presented on page 164 is the characterization of rules for response according to Ministry of Human Resources positions, and specifically, of rules of response to women who apply for social assistance. It is an attempt to delineate current practice in a situation in which workers' positions and Ministry rules define the limits and kinds of responses that can be made. In judging a woman's needs in relation to her problems, a great deal of discretion is obviously in the hands of the workers: their response is determined by the mandate of the Ministry as defined in relation to their specific job positions.

During the interviews with Ministry of Human Resources workers, our questions (see page 162) focussed on the limits and nature of worker discretion and the definition of rules for response in specific situations where battered women seek aid from the Ministry. The aim was to determine the variation and consistency in response. Interviewers used the model of current practice and the list of questions to check with informants about the accuracy of various alternatives.

A description of the Ministry structure and the mandates of various workers is found on page 161. It is important to stress that the mandate for workers in general is to aid women with children. The principal issues defined in relation to protection for battered women, are, in this context, defined in relation to a woman and her children. As the worker's caseload builds, protection of children rather than protection in relation to the battering itself takes priority. Generally, the workers interviewed were prepared to aid battered women by investing time and concern in the recognition of their problems, but within the limitations described by their job description and Ministry mandate.

There is no specific Ministry of Human Resources policy with regard to battered women as such, though at the time of writing there is active interest in formulating such a policy. There is also an ongoing debate as to the desirability of having a specific policy for battered women at all. For many workers, including most of our informants, discretion is seen as a tool working for the most part in favour of

battered women and the concern is that a prescribed policy could severely restrict options for aid. It should be stressed that in cases where workers are sympathetic and informed, discretion may well be used in favour of battered women. In other circumstances, difficulties can arise.

In the rest of the chapter the Ministry of Human Resources mandate and services are discussed in detail and issues of concern to battered women are raised. The responses of the workers interviewed provide the basis for considering the difficulties they, and the women they serve, face. The chapter concludes with a discussion of practice and policy.

## FIGURE IV

### MANDATE AND STRUCTURE OF MINISTRY OF HUMAN RESOURCES

Mandate: to deliver a broad range of social services and income security programs including income assistance, child welfare services and assistance to handicapped and elderly. (Services for People, Annual Report 1979, Province of British Columbia, Ministry of Human Resources)

Structure: 19 regions in the province. Minister, Deputy Minister, Executive Committee, 19 Managers, District Supervisors, Social Workers, Financial Aid Workers, Family Support Workers and Clerical staff.

Managers - responsible for implementing executive decisions and developing policy for regional area. Regions are autonomous in program and resource planning and in allocation of monies alloted them in the child welfare area.

District Supervisor - responsible for running of local office. Accountable to regional manager; much delegated authority in financial and child welfare area. Some input into policy making and program planning at regional level. Her/His attitudes and values are important in determining how policies are implemented at the local level - e.g. Supervisor decides GAIN appeals at the office level and can authorize up to $500 in crisis grants.

Social Worker - has mandate for protection of children under 1981 Family and Child Service Act. This entails statutory responsibility for the protection of children. Constraints: social worker is individually (and sometimes legally) responsible for child welfare caseload. Regularly accountable in court for any action taken under the Family and Child Services Act. Workers' lack of time and resources means they are unable to give adequate response to all of the families and individuals who make up their caseload.

Family Support Worker - has mandate to work intensively and directly with families in resolving problems that might otherwise lead to the removal of children from the home. Accountable to social worker and district supervisor.

Financial Aid Worker - responsible for administering GAIN act. Constraints: individually responsible and accountable to District Supervisor for all financial decisions; work thoroughly audited once a year.

FIGURE V

Main questions to be covered in interviews with MHR workers

1. Clearly, discretion is a dominant feature of the MHR model/practice. How do workers use this discretion - in granting (a) income assistance; (b) crisis grants; (c) other services such as homemakers' services, child care, etc.?

2. Do workers catagorize battered women per se? Do they make a distinction between a woman who "just" wants to separate from her husband vs a battered woman? If so, what are the differences in practice?

3. Is the financial workers' main concern for helping the battered woman or is it the fear that the MHR financial policy might be abused by the woman? (i.e. get worker's views on priorities and attitudes re: financial policy.)

4. Does a worker's approach/response to the woman change if the woman comes back several times (i.e. if the woman doesn't appear to be working towards becoming "independent")?

5. Do workers think a policy is needed re: wife battering? If so, what suggestions would they make? If not, why not?

6. What resources do workers refer battered women to; which resources do they know about?

7. What about women who have no kids? Do they get different treatment (since protection of the kids is the only "policy" MHR really has )? Is the woman without kids treated like a "single employable"?

8. What about sponsored immigrants? (i.e. if a husband has sponsored his wife and she wants to leave him what can/do the social workers do?) Is there immigration policy that conditions social workers' response to such a woman? If so, ask for more explanation from worker re: her interpretation of immigration policy implications.

## IV.B. MINISTRY OF HUMAN RESOURCES AND BATTERED WOMEN

### IV.B.1. Mandate of Ministry of Human Resources

The Ministry of Human Resources' mandate is to deliver a broad range of social services and income security programs including income assistance, child welfare services and assistance to the handicapped and elderly.

It is important to note that the federal government contributes a significant proportion of Ministry operating and program costs under an agreement with the provinces provided for in the Canada Assistance Plan Act of 1967. According to terms of this Act, the province may claim up to 50 per cent of provincial expenditures on income assistance and social service benefits provided they are administered according to provincial legislation that is within the limits prescribed in the Act.

Only some programs are shareable. For instance, income assistance and child welfare services are shareable but GAIN (Guaranteed Available Income for Need) for over 60s is only partially shareable.

Wife battering in this context is generally viewed as part of the MHR mandate insofar as it is related to child welfare concerns and services.

However, the Ministry of Human Resources does play a crucial role in protecting women from further violence. Because the man in a battering relationship usually controls the family's assets, a woman who is seeking the protection of the law faces the problem of finding and paying for secure housing for herself and her children, and obtaining the money to live on while the family's assets are divided by the courts (and perhaps afterward). Unless she can obtain housing and money and get the kind of information she requires to engage in the legal process, she is forced to remain in the battering situation indefinitely. It is clear that the effectiveness of legal remedies depends to a large extent on the ability of people to use them, and that in the case of battered women, their access to an independent source of income and a secure environment for themselves and their children is a key and essential prerequisite to preventing a recurrence of violence.

## FIGURE VI

### MODEL OF CURRENT MHR PRACTICE

Woman leaves and applies for social assistance (or husband leaves)

| Eligible for ongoing assistance if she has a separate address and agreement to seek support or maintenance and if: | Eligible for crisis funds if: | Not eligible if: |
|---|---|---|
| - she was on social assistance with spouse | -employed but has no short term funds (allowed $1500) | - employed and has short term funds (over $1500) |
| - unemployed and has only allowed assets (family home, car, $1500) or no assets | | - unemployed but has unallowed assets (property aside from family home which is not lived in, cash over $1500, insurance, bonds, anything not held in trust at time of application. |
| - on U.I.C. with ongoing U.I.C. rate below welfare rate | - eligible for UIC but quit or was fired due to leaving spouse (and therefore has penalty wait) or in process of appeal. [N.B. - variable, discretionary] | - eligible for UIC but quit or was fired due to leaving spouse (and therefore has penalty wait) or in process of appeal. [N.B. - variable, discretionary] |
| - receiving old age pension, worker's compensation, etc. independantly from husband and rate is below welfare rate | - receiving old age pension, worker's compensation, etc. either:<br>(i) independantly from husband and has no cash; or<br>(ii) jointly with spouse- must reapply for independent payment | - receiving old age pension, worker's compensation, etc. independently from husband but rate is above welfare rate and has cash |

- If the woman has no clothing, furniture, transportation, kitchen supplies, school costs/ supplies, etc. she may or may not be eligible for assistance. Eligibility for crisis grants appears to be discretionary (regional level?). She may be required to obtain goods from family home. Removing goods may be impossible due to legal process, lack of vehicle or lack of money to pay moving expenses.
- If the woman is awaiting settlement she may be required to repay (discretionary). She may have frozen assets which are unallowed - e.g. bank account, property. She may have no access to the family home. If the home is rented she is not eligible for crisis grants.
- If the woman is receiving maintenance she faces several problems. The payments may be sporadic or non-existent. Her husband knows her location. She uses up "allowed" earnings so she can't go on VIP, employment training.
- If the woman has to relocate in order to evade her husband or be closer to family or employment, she may or may not be eligible for assistance - depending on her situation. Money may be needed to pay moving expenses (which may be paid by crisis grant). Money may be needed if she has to quit her present job.
- Childcare Subsidies are often not available to the woman. They may be paid to women currently employed if their wages are below a certain amount. They may be paid for crisis needs... The may be paid to give the mother time for legal process, a break...
- Women who are still in the home with their spouse are not eligible for assistance. These women may want to leave but have no money or resources. They should be referred to Transition House; to a lawyer. N.B. - this is a problem area in that the woman may not yet have been beaten up.

## IV.B.2 Interpretation of MHR mandate in relation to wife battering

All but two Ministry workers interviewed stated that wife battering was definitely part of the Ministry's mandate. However, each informant defined, justified or explained this mandate somewhat differently. Thus, to the district supervisor it was clear that the mandate of the Ministry is to work with families in crisis - emotional or financial. He sees the wife-battering mandate as an extension of the mandate for the protection of children:

> Yes, I see wife battering as an extension of child welfare. If Mom and Dad are going at it, the kids are not in good shape. One is the extension of the other.

This tends to mean that the mandate would address the needs of women with children and would exclude those without children:

> Certainly battered women are an aspect of the work of the Ministry although there is a definite tendency to work with parents as opposed to single women who have been battered. Single women seem to be more able to look after themselves. They are adults and if the battering persists it becomes a police matter. But if a battered woman has children, the situation becomes more entangled. It's not as easy for a battered woman with children to quit a relationship.

Two workers interviewed expressed their view that the Ministry had no mandate to work with battered women. The goal of Ministry policy is that of keeping the family together and in relation to battered women this means, "We'll try to keep intact as much of the family that is intact. If a woman is leaving it's our responsibility to help her with the kids."

Services provided to battered women in name of this mandate are:

- financial aid under the GAIN act;
- Transition House or other shelter;
- counselling from social worker and/or family support worker;
- referral to legal aid, courts, medical help;
- homemaker, daycare, crisis grant, transportation and training.

In policy then, the Ministry <u>can</u> provide all of the services needed to help a woman leave a battering situation and begin to put a new life together away from the batterer.

Line workers, responsible for implementing policy, discuss it in more qualified terms. For example, for a social worker, battering is within the mandate but child welfare is the priority:

> You have to remember too that the MHR mandate is families and children. This means my priority has to be managing a child welfare caseload; it's family and children oriented, usually single mothers on their own.

This social worker sees the mandate as working with all battered women whether or not they have children, but sees time as a limiting factor in helping all those who are referred to her.

One worker sees the mandate to work with battered women as being much broader than in Ontario, which is more narrowly child-welfare focussed. This is reflected, she says, in a better network of resources and supports for battered women here than in Ontario.

The family support worker's (FSW) mandate is to work only with families, so she can become involved only in battering situations where there are children. Further to this, the family support worker is not usually placed with a family unless there is thought to be some serious risk to the children - one worker confirmed her role in a family is to provide an alternative to the apprehension of children.

GAIN policy and regulations allow financial aid workers to provide battered women with anything needed materially, usually under the hardship clause.

This entails a considerable amount of discretion in implementation of policy - beginning at the financial aid worker (FAW) level and continuing up to district supervisor, regional manager and executive. They are tightly bound by policy in some respects - such as not being able to help a woman before a crisis:

> It says in policy that we can't help someone run away from their husband. We can refer her to Transition House or Powell Place, we can give her food vouchers. But in this area, these situations are often seen as a plot by couples to get more money.

All those involved in the financial aspect of aid to battered women agreed that a financial policy addressed specifically to their needs is unnecessary and could impede their ability to help such women:

> There are provisions in policy to cover all needs at present and if you write things in for battered women,

> you'll end up limiting yourself. For example, you'll be told that if a woman comes in for the third time you will or will not be able to do X for her. With the proper assessment, there are tools within existing policy to get these women what they need.

These same concerns were interpreted slightly differently by another financial aid worker who said:

> Whatever policy you have in front of you can be given a very rigid interpretation if that is the intent of the authority interpreting it. We can have a policy that says we have to grant x,y,z to a battered woman, and the next thing is 'What proof do you have that she is battered?' That's precisely the question an unsympathetic authority will ask.

A good example of how clarifying policy can operate to reduce discretion to the detriment of battered women is the recent change in policy defining "employable." Before October 1981, a family aid worker could decide that a woman, by virtue of her recent battering crisis, was unemployable. New policy that has just come into effect removes from the family aid worker discretion to categorize her as such and instead terms employable all those not specifically exempted under the new definition - which includes persons 65 years or older; persons suffering from a physical or mental condition which prevents them from accepting employment; single parents with one child under 6 months or two children under 12 years old; and single parents whose children have a physical or mental condition which requires the parent's presence in the home.

In summary, battered women are not addressed per se in legislation, policy or regulations of MHR. They fall under the mandate in two situations - as an extension of child welfare or because they require substitute income sufficient to provide basic needs.

### IV.B.3. Referral of battered women to Ministry of Human Resources staff

All of those interviewed expressed sympathy with the problems faced by battered women. Their responses were affected by a variety of factors. A key factor, and one which emerged repeatedly in their accounts, was the organization of work resulting from the priorities established by the Ministry for client service. The Ministry focusses

primarily on the protection of children, thus battered women are neither an identified target group for service, nor perceived as people with significant problems of their own. The battered woman with children is generally seen in the context of her children, as someone who may be unable to parent or protect her children from violence. This perspective emerges largely in the way the work of the office is organized, and the conditions under which a worker might come to see a woman.

Referrals of battered women to MHR are rarely presented directly as battering problems per se. Rather they take the form of requests for financial assistance, a child protection problem, a request for daycare services or help with a housing problem. Sometimes women, having heard of Transition House, come to an MHR office asking for this kind of placement but more often they come seeking financial help after having left their husband or partner. If such a woman seems visibly upset, injured, and/or is willing to see a social worker, she is normally referred to one immediately. At this point, the battering may be presented by the woman as her problem or identified as such by the social worker. As will be seen below, however, such is not always the case.

A battering situation may also come to the attention of a Ministry office through the indirect route of a protection complaint. Although there are no Ministry statistics on the relation between child abuse/neglect and wife battering, it is frequently the case that wife battering and child abuse are both occurring in a family. All of the line workers interviewed acknowledged this connection in regard to their child welfare caseloads. In some situations the child abuse and wife battering are both occurring, and in others the extent of the wife battering is such as to constitute emotional abuse of the children present in the home. Here again, however, because of the MHR mandate, the focus of the social worker's assessment and casework will be the child welfare concern and the battering will likely be perceived as a secondary problem - if it is perceived at all.

The third source of referrals of battering problems to MHR is, of course, other agencies, chief among them being public health units, the schools and the police. Because of their involvement in families with children, pulbic health nurses and school teachers are often the first to become aware of problems in these families, including violence towards the mother. Either a child will confide in a public health nurse or

teacher, or these professionals will have determined from the child's problematic behaviour - or health problems - that there are problems at home. Again, in referring these problems to MHR social workers, the presenting problem is usually "the child's behaviour" or more generally, "family problems" - it is rarely battering per se. With referrals from the police, "domestic disputes" or battering situations are most likely to be presented directly as the problem requiring service. In Vancouver, referrals in these cases come to MHR via the police liaison social worker employed by MHR but located in a local police station on a full-time basis. Police-related referrals also come via Car 86, a joint MHR-Vancouver police-staffed program that entails a police-social worker team being available to the police on a seven-night-per-week basis to intervene in domestic disputes.

It is difficult to determine how much of the local MHR office's work is constituted by referrals of battering situations. This is because the Ministry keeps no statistics on battered-women problems; they are subsumed under the categories of "brief service" and "personal service" in the Ministry's record keeping; the former meaning one to two appointments in regard to any of the whole range of family problems and the latter meaning on-going service in regards to the same. Transition House keeps records of the numbers of women and children accommodated and turned away. But apart from this, there is no way of knowing the severity and extent of the problem of battering or the extent to which local offices are, or are not, providing service in this area.

Given this lack of knowledge about the dimensions of the wife-battering problems and the weak mandate of the Ministry in regard to it, it is perhaps understandable that one social worker interviewed could say that in two years as a line worker she encountered no battering problems:

> I had a family and adolescent caseload, just never had any battered women. I have no direct experience in providing protection for battered women.

However, another social worker said that in her caseload of over forty families and children in care "most of my adult women have in some form been battered and one was murdered by her husband." A family support worker said she estimated one out of three women she worked with was battered, but noted that the battering "is not why I am initially involved"

and is usually revealed only after a trust level has been built between her and the mother.

On the basis of data available here, it is difficult to say which of these two orientations is the more characteristic of MHR social workers. But it is important to note that of the line workers interviewed who were supportive of the plight of battered women, all felt that their views were atypical and that most of their colleagues were completely focussed on child protection concerns and/or were unaware of battering as a distinct problem in which it was appropriate for them to be involved. This was particularly the case in relation to battering situations where the women had no children.

In summary, we see that for several critical reasons, including the Ministry's clear mandate for child protection but unclear mandate in regard to batterings, and the lack of information on the extent and nature of this problem, wife battering per se is not generally seen by social workers as a situation requiring social worker intervention, although many professionals outside of MHR do refer battered women to social services for advice and counselling. When battering is viewed in this way, it is often difficult to intervene to the needed extent due to the lack of time and resources, attributable again to the mandate situation - clearly a circular problem.

### IV.B.4. Attitudes of MHR workers towards battered women

While MHR workers' responses to wife battering certainly reflect the problems of unclear mandate and a lack of resources, they also reflect those workers' beliefs about the nature of the violence and the women's "real" problem, as well as their broader well-entrenched views on family life. Those workers who have been affected by the women's movement, and more specifically by the transition house or refuge movement, have values and attitudes that are quite different from those of workers who tend to view battering as a private matter between adults.

Thus, several of the social workers and financial workers interviewed shared the belief that no woman deserves to be beaten no matter what she has done. They also recognized that male authority and the different position of men and women in our society are the major factors behind battering. Further, they are aware of the reasons - economic, emotional

and social - why it is difficult for women to undo a marriage or common-law relationship and why so many women, having done so, then return to their battering situations. They also thought many other workers "still seem to think that if someone smacks you around, why not get yourself out? They can't understand why a woman would stay in a battering situation."

One social worker described battered women as tending to be "needy, having low self-esteem and emotional problems. Many...continue to pick men who batter...often these women are almost childlike in their needs for approval and affection." This is undoubtedly a fair characterization of some of the patterns displayed by battered women. But a problem arises when workers see these patterns as something women can shift by themselves, rather than as products of women's socialization. In offices where the former view prevails, supportive intervention is unlikely to be forthcoming. Accordingly, one worker spoke of the prevalence of the attitude: "They made their bed, let them lie on it." And another stated that battering situations not involving children were matters for the police to handle, not MHR workers.

An unfortunate ramification of believing the woman must be doing something to cause the battering is the witholding of information that could help her but, in turn, might cause a break-up of the family. One social worker said, "A lot of workers feel this way" and added, "It's pretty threatening for a woman to realize the social worker is 'on to her' and for the worker to come across punitive."

Several social workers viewed battered women as huge consumers of very limited resources. One gave as an example her experience with a battered woman client over a one-year period:

> Just in terms of time, I saw her a minimum of once a week, a family support worker saw her twice a week, she had a homemaker three afternoons a week, and attended a battered wives' support group once a week. Her child was in the Pace Programme (programme for young children with emotional and learning problems) several days a week and Emergency Services was involved with this mother most weekends. We provided every service we could.

She stated that no social workers have the time or program resources available to provide this level of service to any but a few clients;

so of necessity, those few are the ones with child-abuse as well as battering problems.

Social workers also described some of the frustrations of working with battered women to help them make it on their own. As one worker put it, "The problem is that income assistance is not enough money to manage with easily - daycare presents difficulties and so on. How can someone feel good on macaroni six times a week, with no clothes, no job prospects and peripheral support?" After one-and-a-half years of line work this worker had come to the conclusion that "there are some people you simply can't help - you can't change years of thinking and feeling in a month. Change of any kind is hard for most of us, and change to a life of living on your own with kids is extremely hard."

Almost all social workers and financial aid workers spoke about the issue of battered women who repeatedly return to battering situations, only to leave again. One described a social work colleague who had become so frustrated in this regard that she made strict client obedience a prerequisite to continuing help. Her colleague's view was:

> 'If I say you should leave, you should leave.' Then when her clients would keep going back she got to the point where she wouldn't listen to them anymore. She would, in effect, write them off.

Of her own attitide, this worker said:

> Of course it's irritating when they go back, but it's their life and you can't make that decision for them. All you can do is be there for them to talk with when things get rough again.

And of financial aid workers' attitude to that problem, she had this to say:

> In some offices the financial aid workers (FAWs) are really redneck; in my office the FAWs are more concerned and show more understanding. They don't just hand the person a cheque and send them away.

Another problem specific to social work practice is that of the difficulty of trying to help a battered woman who is also involved in a child-abuse situation. Given the social worker's statutory responsibility for child protection, it is not uncommon for the worker

to find herself in the position of telling a battered woman that she must choose between her husband/partner or her child. Even though the woman may not be the abuser, the focus here is on her because in most cases she is the one taking responsibility for the children. If she isn't prepared to take them out of a high-risk abuse situation then the social worker has no choice but to step in and remove the children herself. She will then attempt to work with the mother towards returning the children to a safer home situation. Although this dilemma is frequently worked through to a good conclusion, it can make helping the battered woman very difficult.

One aspect of the way children can sometimes be protected at the expense of their battered mothers is to be found in the policy described by a social worker with respect to crisis situations. If both mother and children are being abused, and the only emergency shelter the mother has available to her is one to which the children cannot go with her, the Ministry will place the children in "protective custody." A worker described it this way:

> Once they are apprehended, they are a child-before-the-court, until there is a hearing to determine custody in family court. At the hearing, custody would either be returned to the mother, or they [the children] would become wards of MHR. To capsulate, the social worker checks with the mother to determine if she can look after the children wherever she is. If there has been a split between the two [mother and kids], we can look at the alternative of apprehending the kids for an interim period...I've never been involved in any court proceeding involving only a battered woman.

Apprehension may be a necessary and useful step in cases where the mother has abused her children. But it seems that it is used in situations where batterers are abusing both mother and children, and where some crisis has forced a separation. While the protection of her children may provide some relief for a woman whose husband has threatened her with killing or abducting them, the solution described is not the obvious and best one - removing the batterer and providing secure shelter for the rest of the family.

In terms of attitudes towards working with battering men, most of the line social workers interviewed expressed a willingness to do this work, but said they have usually been told that there are no problems,

or to mind their own business. One family support worker said she had only two families where the men had remained in the setting. Another stated that her greatest problem in working with battering situations is that of getting the man involved as well in the first place. The approach she finds most effective is that of not taking sides, and attempting to build trust between the man and the woman. Her attitude is that if she can help both parties define what they want, then their situation will change - either the couple's relationship will improve or they will separate. She concludes, "I rarely see husbands make changes but my work with the couple gives the woman a chance to work on her self-esteem and then decide where to go from there."

This raises a final general question about battering situations and social workers' attitudes towards the family. Social workers exist to help support and reinforce the nuclear family against dissolution. As the MHR annual reports regularly state, the social worker's job is to "assist families in resolving their problems and improving the standard of child care so that the family may remain together." (Services to People, 1979, p.34) While few workers subscribe to the belief that the family should be kept together regardless of the cost to some members, most are focussed on the cost to the children, not the mother. This is particularly clear in family situations where there is no child abuse but there is wife battering. It would be unusual for a social worker to encourage a woman to leave, although the worker would probably support the woman if she decided to do so on her own. One of the unwritten rules of the Ministry is that workers cannot be seen to be in the business of breaking up families.

## IV.C. MHR SERVICES TO BATTERED WOMEN

MHR offers two kinds of services to battered women: financial services and social services.

### IV.C.1. Financial services

#### (a) Income Assistance

There is no financial policy that specifically addresses the situation of the battered woman but Income Assistance is available to such a woman who meets certain eligibility criteria. First, she must have established herself at an address separate from her husband's. As one financial aid worker put it:

> If a battered woman comes in and says, 'I want to leave my husband,' we tell her that we can do nothing for her until she has actually left him and has established a separate address. We likely would refer her to a social worker. If, however, she comes in and says, 'I left my husband,' then we can help her - either by placing her in Transition House or Powell Place, or if there is nothing else, a motel. We pay the rent and give her support money. When she finds a place of her own, we pay the security deposit and shelter costs up to the maximum allowed.

Second, the woman must be prepared to initiate maintenance and support proceedings at family court. There is no difference in policy between a woman who is battered and requesting assistance and a deserted or separated woman needing assistance. This can pose a problem for a worker sympathetic to the battered woman's special wish not to antagonize her husband, or even perhaps not to let him know where she is, as the worker must seek support from the husband in order to consider the client eligible for continuing assistance. Some financial aid workers deal with this by using discretion in requiring contact with the batterer - they make a recommendation that this not occur because of the possible danger to the woman's physical well-being. Others require the woman to go to family court within two months, rather than immediately. Others admit right out that the policy is not practical and that it takes far too much time for workers to contact spouses. Another aspect of this policy which could threaten the

security of the woman is the fact that family court may not prove to be the best resource for a battered woman, particularly if she is launching criminal charges against the batterer. Separations resulting from battering should be regarded as potential criminal and Supreme Court actions.

However, even if a woman is not eligible for income assistance according to policy, she may still be allowed emergency assistance. Examples are the woman who is employed but has no short-term funds and the woman who has unallowed assets.

(b) Crisis grants

Crisis grants are sums of money available "to provide an item of need to Income Assistance recipients, and where failure to do so would result in imminent danger to the physical health of the recipients, or apprehension of the recipient's child or children under the family and child service act." (GAIN regulations Section 4(3)2(a)) The crisis grant is important because it is often the only way that a woman can get re-established if she has difficulty obtaining possessions from the family home. She may also require extra help with babysitting costs, the costs of moving her possessions and establishing her children in a new school, plus a variety of other expenses associated with starting a new life.

The crisis grants are administered differently in each region so that in region 16, for example, a financial aid worker can authorize up to $50 at the FAW level and $500 at the district supervisor level. Anything above this requires regional manager approval. The amount of crisis grants given out also varies from region to region, with one region alleged to have never given out a crisis grant. One FAW said crisis grants are available in her region for any necessities or whatever is needed for "health and welfare." This could include beds, clothes, kitchen utensils or moving costs for relocating. But an FAW from a different region stated she "had one battered woman who wanted a crisis grant to move out of this area and get set up on her own. This was denied at the manager's level." In yet another region the financial aid worker's personal practice is to try using Ministry funding sources other than crisis grants because, "I can't put in too many." A district

supervisor commented that "another reason for the variation must be the accessibility of alternative resources. The community resources and support makes a difference. Here we can get thrift shop furniture easily, so we don't use the money for furniture."

The issue of repayment of crisis grant funds issued to battered women who later get a court settlement was raised in the interviews. Noting the conflict between the intent and practice of this policy, a district supervisor said one view is that need, and no other factor, is the criteria; another view is that need wouldn't have existed if the client had access to funds, so the money should be repaid. He said, "In some cases we have access through the court system - we get our portion before the client gets theirs" but added, "I don't think we seek repayment when it is a separation - I've never heard of it."

Several financial aid workers in another region said there was policy addressed to recovering crisis grants but recovery was not general practice. They said only if a woman is employed or receives a large settlement would an agreement to repay be considered.

Cases have been reported in other areas of women compelled to repay the Ministry out of their court settlements. Another financial aid worker indicated that agreements to repay were used where there was going to be a division of family assets, although she too tries to avoid forcing people to repay. This is an area in which the attitude of the financial aid worker is important. The issue is problematic for a battered woman for two reasons - the client may find herself doubting the usefulness of engaging in a long and difficult court process if she gains little or nothing by it. Second, if both the Ministry and the lawyer take a portion, the balance may not be sufficient to allow her to obtain adequate accommodation, or to live for any time without social assistance. A home and a car are assets which are allowed a person on welfare, and being able to obtain these would both make her position more secure and enable her to re-establish more quickly and get off social assistance.

It would appear that the kinds of financial services available to battered women are quite variable across regions. They also vary with the woman's situation, particularly if children are involved. As one financial aid worker put it, "If children are involved, of course, it's a different picture. We can allow crisis grants for food overages, shoes,

clothes, pots, beds, et cetera. There are tools within policy to get these women just about anything they need."

The recent (October 1981) changes in the income assistance policy have definitely affected battered women applying for financial help. If such a woman falls under the new definition of employable then she will be treated like all the employable people under the new policy. This means that her income will be cut back by either $35 (for women with children) or $55 per month (for single women), and she will have to re-apply for assistance every month. If she has a child under 6 months or two children under 12 years, or health problems, then the new policy won't affect her. Or if she is willing to take training for upgrading then she will receive a $60 per month increase over the regular rate.

The health proviso raises the question of whether a woman who has been damaged emotionally by living in a battering situation would be considered employable under the new policy. According to one supervisor this woman's experience would be taken into account in this way:

> She would be expected to get into a group program for battered women and agree that six months or so later she would be entering a training program or looking for work. In this case, her income won't be affected because she will have made a rehabilitation agreement with us.

The concern here is that a supervisor with a different view of the effects of battering might not be so understanding.

(c) Other subsidies

In addition to income assistance the woman who has left a battering situation may also be eligible for daycare subsidies. These are available for women in upgrading or training programs, and regional managers now have the authority to authorize payment of the full day care cost, plus any surcharges - and this in advance of training - to allow children time to settle. One financial aid worker, however, noted that present day care funding was set up to deal with long-term arrangements and any emergency babysitting monies, to use while the mother went to court, for example, had to be found elsewhere. Again, a woman with children may receive other financial benefits such as medical and dental coverage and optical services. One worker did note a problem here in

that these may not be made available to the woman immediately, and if the woman's spouse cancels her and the children's medical coverage, they could be caught without any.

Women who return to their husbands or partners and then leave again for a separate address are once more eligible for financial help. All of the financial aid workers interviewed, however, said that in situations of this kind they may get concerned about possible fraud and/or they would hesitate to set the woman up as an independent. Rather, they would try to place her at Transition House so she has time to decide what she wants to do - go back or stay on her own.

(d) Summary

What is most clear from interviews about financial aid policy is that a considerable amount of discretion is exercised from the financial aid worker level on up. On the one hand this allows the Ministry workers, under the hardship clause, to provide a lot of assistance to a battered woman if this is needed. But on the other it also allows the Ministry to respond with the minimum amount of help if the financial aid worker so chooses. One financial aid worker stated that in Vancouver "discretion is used extremely positively. If it is used negatively, a client is told 'appeal, appeal, appeal.'" The very real problem of how far to go in using discretion, and what happens if one oversteps the invisible boundary, is revealed in this financial aid worker's statement:

> I can't say at this point that changes in policy would help, it just needs to be interpreted consistently. The policy isn't the problem; the problem is workers who are threatened that their own necks will be in a noose.

Consistent interpretation is unlikely when each region, district and staff members have their own understanding and practice of discretion. The fact that in interviews with financial aid workers, supervisors and managers there were incidents of disagreement as to what was and was not discretionary (initiating maintenance proceedings, repayment of MHR monies on receipt of matrimonial property settlement, crisis grants for relocation expenses) does suggest some confusion in this area and does give cause for serious concern. While policy must be designed to allow for variable situations and circumstances, it must also provide for equitable

treatment in similar circumstances. Given the differing views on the above matters, such equitable treatment is improbable.

The question of whether the Ministry needs a separate financial policy for battered women was answered mainly in the negative - particularly by financial aid workers. Two FAWs expressed concern that such a policy could limit to some degree the assistance they can presently provide to battered women. A regional manager also agreed that there was no need for a specific financial policy for battered women, but suggested that the policy manual be rewritten with more reference to battering situations. He gave as an example the fact that the manual does not cover the area of assistance to a woman in her home.

IV.C.2. Social services

If a battered woman requests help from a Ministry social worker there are a number of services that might be helpful. First and usually paramount at the outset is the question of safe accommodation. As one worker described it:

> I see first to her housing situation: does she have a safe place to go to, does she have food and transport money, anyone to talk to? Does she need Transition House or Powell Place or Owl House? If she is a woman who has come to MHR several times before for help, I am more likely to refer her to one of our resources rather than try to get her set up on her own right away.

After these immediate needs are seen to, the social worker will counsel the woman about her options in terms of laying charges, family court, and getting legal aid. If the woman wants additional counselling, such as help becoming independent, this may or may not be available. There is discretion in the provision of this service as well as in the financial service area. One social worker described the situation in the following way:

> If a woman seems really upset, lost, depressed, I will arrange to maintain my contact with her if she is open to this. MHR has little or no policy in this area, particularly if a woman has no children - so I pretty much decide myself what help I can provide.

In yet another region it was pointed out that a battered woman who came to MHR but was still living with her husband would likely be referred immediately to mental health or marriage counselling or "anywhere else unless the social worker feels the child is in danger." If she has left her husband and needs money she would see a financial aid worker; if she has no children she would be referred elsewhere for counselling or support. Only if there are children perceived to be in danger would the battered woman actually receive assistance from a social worker.

Lack of assistance in such situations often reflects the very real problems the line worker has in obtaining safe accommodation and in getting the time to do the intensive counselling and advocacy work usually required in battering situations. Or the worker may not have the appropriate skills to detect or work with battered women. The lack of assistance also reflects the Ministry's legislated mandate to protect children. Women fortunate enough to get into a transition house have greater access to the support services required at this point.

A service that could be made available to a battered woman - to help with her feelings of low self-esteem and with problems with her children, and to do marital counselling as well - is a family support worker. However, it is crucial to note that the placement of a family support worker is usually dependent on the assumption that the mother is having trouble handling the children, therefore putting the children "at risk." One family support worker said her philosophy was "before you can make things better for the child you have to fix the base" and went on to say, "I'd like them not to have to have trouble with the kids before they got to me" so she could do intensive support work with the battered woman. She noted she didn't get into a family unless a social worker was really open to what was happening.

Homemaker services are available for situations requiring child care to relieve the mother periodically at crisis times and/or to help with housework if she has been injured. A special services worker could also be requested to help the children adjust to a new family situation. A day-care-finding service is also available in each district office. Again, the main problem here in almost every instance is a shortage of resources. Most of the above resources, excluding homemakers, are not readily available.

Several workers recommended the development of additional resources for battered women. These included: an advocacy service for women wanting to appeal MHR decisions; special MHR staff to help women get through family court faster by assisting support and maintenance proceedings; more pamphlet information available in MHR offices to tell women what services are or may be available for them; a better counselling service for women who want to leave their husbands; more safe housing, especially second stage housing; a multi-ethnic transition house, especially for Indo-Canadian women; more staff development in the area; and more generally, "a reasonable policy for dealing with battery and with battered women."

## IV.D. SUMMARY

As in other parts of this report, a review of protection offered to battered women by the Ministry of Human Resources reveals two aspects to the problem. The attitude, skill and knowledge of the social service professional in relation to wife battering and the subsequent practices used in the interaction between professional and client is the first aspect. The second is the view of women and the family held by the Ministry as reflected in its policy, and the effect of that view on women - wives, mothers and single women - who are battered.

# CHAPTER FIVE

## HEALTH CARE SYSTEM

"ALLOWING WOMEN TO MAINTAIN THEIR DIGNITY AND INDEPENDENCE IN THE HEALTH CARE SYSTEM IS AS MUCH A PART OF THE NEEDED RESPONSE TO BATTERING AS TEMPORARY SAFETY. FOR HEALTH IS NOT SIMPLY A LIFE WITHOUT UNNECESSARY INJURY. IT IS ALSO THE EQUALITY AND SELF ESTEEM THAT PERMIT A WOMAN TO ENJOY SUCH A LIFE."

(Evan Stark, et al., Wife Abuse in the Medical Setting, An Introcudtion for Health Personnel, Centre for women policy studies, 1981, p.41)

# CHAPTER FIVE - HEALTH CARE SYSTEM

## V.A. INTRODUCTION

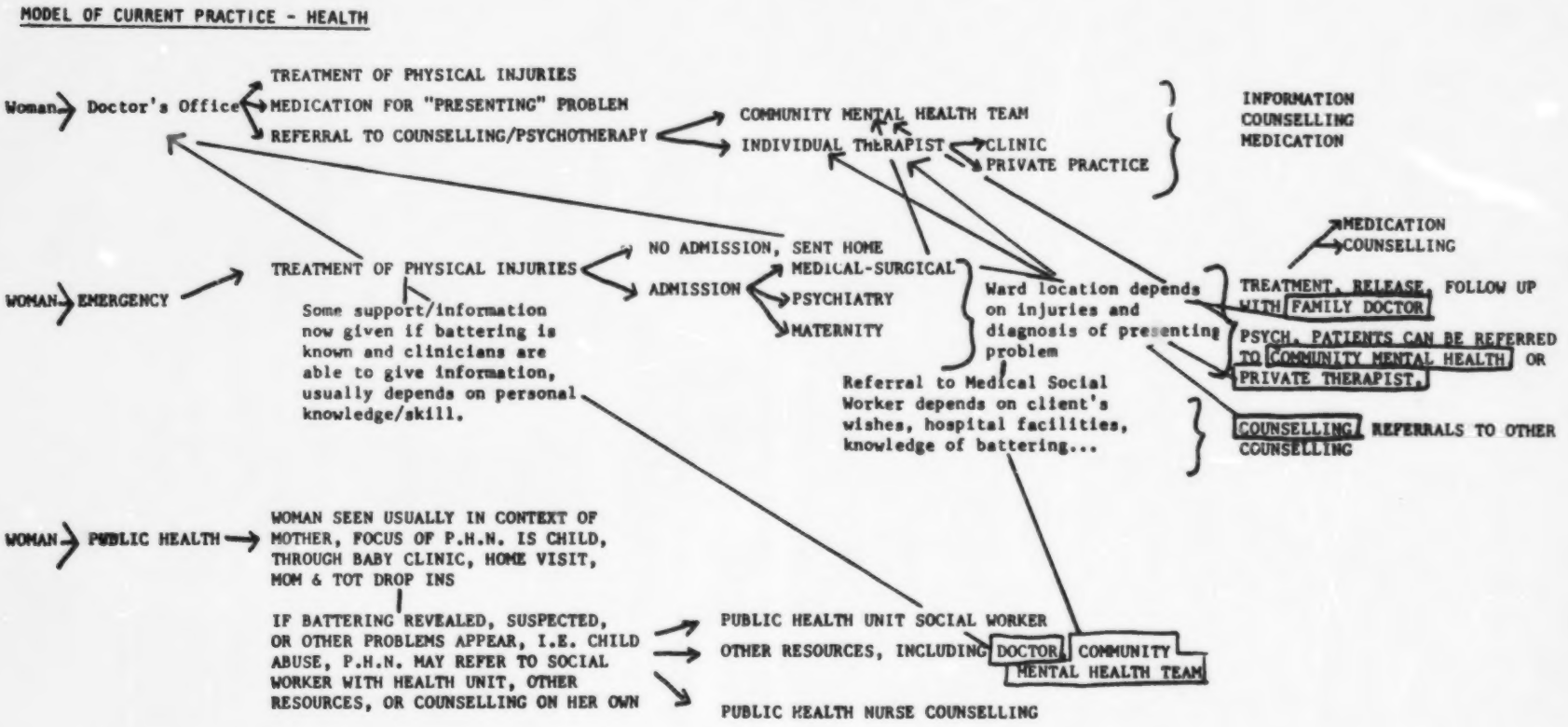
The interviews with health professionals were designed according to the methodology described in chapter one of this study. The first part of each interview, intended to generate discussion about the informant's knowledge and experience of protection for battered women, asked two questions: what has been your experience generally with protection for battered women, and, is your view of protection held by others in your profession? This discussion provided a framework for both describing and understanding the current treatment and management practices used by informants in their work with battered women.

Discussion of specific procedures employed with battered women and description of the range and variation of procedures used in various workplaces made up the second part of the interview. The model of current practice as prepared by project staff (see page 186) was reviewed by informants and any additions or changes were noted.

The proposed health protection model was then shown to each informant and formed the basis for part three of the interview. After completion of this discussion the current legal practice and proposed legal protection models were presented and reviewed. Responses of all non-legal professionals to the legal protection model are found in Section III.C.6 of this study.

The structure of this chapter follows that of the interview. Under the heading CURRENT PRACTICE is presented all information dealing with the informants' knowledge and experience of battered women; comparison with others in their profession; current practices used; response to the project's current health practice model, and a review of formal and informal practices shaping their work with battered women. HEALTH PROTECTION MODEL is the second major heading: included here is a description of the model and its derivation, plus general responses from those interviewed and specific additions made to the model. ISSUES EMERGING FROM THE INTERVIEWS are detailed in Section V.D. and a SUMMARY is provided in Section V.E.

## FIGURE VII


MODEL OF CURRENT PRACTICE - HEALTH
Woman
Doctor's Office
TREATMENT OF PHYSICAL INJURIES
MEDICATION FOR "PRESENTING" PROBLEM
REFERRAL TO COUNSELLING/PSYCHOTHERAPY
COMMUNITY MENTAL HEALTH TEAM
INDIVIDUAL THERAPIST
CLINIC
PRIVATE PRACTICE
INFORMATION
COUNSELLING
MEDICATION
WOMAN
EMERGENCY
TREATMENT OF PHYSICAL INJURIES
NO ADMISSION, SENT HOME
ADMISSION
MEDICAL-SURGICAL
PSYCHIATRY
MATERNITY
Some support/information now given if battering is known and clinicians are able to give information, usually depends on personal knowledge/skill.
Ward location depends on injuries and diagnosis of presenting problem
Referral to Medical Social Worker depends on client's wishes, hospital facilities, knowledge of battering...
MEDICATION
COUNSELLING
TREATMENT, RELEASE, FOLLOW UP WITH FAMILY DOCTOR
PSYCH. PATIENTS CAN BE REFERRED TO COMMUNITY MENTAL HEALTH OR PRIVATE THERAPIST.
COUNSELLING, REFERRALS TO OTHER COUNSELLING
WOMAN
PUBLIC HEALTH
WOMAN SEEN USUALLY IN CONTEXT OF MOTHER, FOCUS OF P.H.N. IS CHILD, THROUGH BABY CLINIC, HOME VISIT, MOM & TOT DROP INS
IF BATTERING REVEALED, SUSPECTED, OR OTHER PROBLEMS APPEAR, I.E. CHILD ABUSE, P.H.N. MAY REFER TO SOCIAL WORKER WITH HEALTH UNIT, OTHER RESOURCES, OR COUNSELLING ON HER OWN
PUBLIC HEALTH UNIT SOCIAL WORKER
OTHER RESOURCES, INCLUDING DOCTOR, COMMUNITY MENTAL HEALTH TEAM
PUBLIC HEALTH NURSE COUNSELLING

## V.B. CURRENT PRACTICE

### V.B.1. Knowledge and experience of protection for battered women

All health professionals interviewed said there was not enough protection for battered women. One doctor, attributing this to the belief in the sanctity and privacy of the family, said: "There is inadequate protection, the family is closed and destructive. Women are beaten and raped, children are beaten and sexually abused, and none of this is well known."

Some informants described the lack of support given to battered women by the courts and property laws, and noted the problem of "helping agencies that often subvert women into returning to their husbands." One described the difficulty of finding real protection even when the system works, stating, "I know women who have done everything - restraining order, exclusive possession of the home - and he still comes back and beats her up."

Several mental health professionals talked about the fear women have of their husbands - particularly of what their husbands might do to them if the women sought protection. "I have a client who sleeps in her car until her husband goes on night shift - she's afraid to go to Transition House," said a social worker in mental health, and added,"Women need protection against their husbands being armed; they are afraid if they go to Transition House their husbands will harass them or their kids will get hurt - shot." A doctor said he counsels women to leave and finds them talking about their fear of death if they did so.

Another informant described an old family friend who moved out of town, took an assumed name and arranged for her mail to be received through a box number - all because she was afraid her husband would find her.

Three specific gaps in protection were consistently noted: police response to battered women, lack of support resources for victims, and lack of knowledge about battering by health professionals.

#### (a) Police Response

Police response to wife battering was the most direct experience health informants had had with the justice system, reflecting their role in the crisis stage of a battering incident rather than in

any ongoing court procedure. Inappropriate police response to wife battering was mentioned specifically by a number of informants. One emergency nurse said unless women are prepared to lay a charge the RCMP won't help them. She described how a nurse would call police, especially if the woman involved was afraid to go home, and their response would often be, "Look, are we going to have to waste our time for several hours over there if she's not going to press charges?" Police have told her most women withdraw their charges 24 to 48 hours after laying them. She went on to note that in 15 years of emergency nursing she had seen a total of three arrests actually made by the police themselves.

Two workers at a community care mental health team also stated that when women phone police for help, they are told police don't want to get involved unless the women want to lay a charge. Another informant involved with the training of police dispatch staff commented that the message given to police about a battering call is coloured by the dispatcher's assumptions as to whether or not the woman would lay charges.

A mental health professional ascribed this lack of response to the frustration that develops when nothing one does seems to help the victim. The obvious response, according to him, is to blame the victim - thinking she must be engineering her own situation. Therapists, he added, often fall into this trap as well. Unfortunately it would appear that some people not only fall into this trap, but perhaps lay it out for themselves to fall into as well.

A public health nurse said her only concern was regarding police communication about their actions to other community agencies. She cited a situation where police arrested a husband who had held his wife and children at gunpoint, but made no comment afterwards to any neighbourhood or community agencies. As a result, the wife and children were left to deal with the aftermath of shock and terror on their own. It was her contention that police could have informed appropriate community or agency staff, and immediate support would have been made available to the family.

(b) Lack of adequate supportive resources for battered women

Informants said another missing protection was the lack of adequate and appropriate supportive resource referrals for battered women. "The resources I need to refer her to, as a therapist, just don't

exist," said one psychologist. The resources she was looking for included job training, long-term second stage housing, therapists specializing in battering, and more self-help support groups. A psychiatric social worker, familiar with the situation in small communities, said resources for battered women were not available where she lived. The problem of "referring and hoping for the best" was another aspect of this - she said women should be armed with a checklist of what to look for in a counsellor in terms of attitudes and knowledge.

A public health nurse said daycare and more long-term second stage housing for battered women should be considered a form of protection for themselves and their children.

(c) Lack of knowledge about battering by health professionals

All informants agreed that identification of and assistance to the battered woman by colleagues would offer her some measure of protection. This process is hindered, they felt, by a lack of understanding of the dynamics of wife battering. One nurse said she couldn't ever remember seeing mention of wife battering on any hospital nursing care plan (a nursing care plan is an outline of nursing care to be given to a patient while in hospital). Regular complete in-service on wife battering was called for by one doctor, who recommended continuing medical education. Several informants said an emergency department protocol or an injury assessment procedure - similar to the present child abuse model - would be of help to them, and subsequently to battered women.

V.B.2. Comparison of their views with others in their profession

To document the range and variation of opinions among health professionals on the issue of wife battering, informants were asked if their perspective on the issue of battering and protection was representative of, or shared by, others in their profession. Their responses reflect several themes which recur throughout the interviews: the need for and effect of education for professionals on the topic of wife battering; the role their professional training plays in shaping attitudes towards wife battering; and policies and practices that focus on the needs of children over those of adults.

(a) Impact of professional training in shaping attitudes

Informants in the fields of medicine, psychology and psychiatry noted the attitudes of many colleagues towards battered women reflected the bias taught in their original training. "The analysis in psychology is liberal," said a psychologist. "Rather than looking at society as a whole - society that oppresses women - it asks: 'What can we do to help the victim be a strong, capable person?'" There was no training on wife battering during this informant's education, and she further noted that psychologists tend "not to go beyond the individual dynamics - they are non-interventionists in society." This practitioner, speaking from her experience with battered women, concluded: "Whatever your training is, you can assume that when it comes to wife battering you have none."

Medical training supports a family-oriented analysis of the wife-battering problem and most doctors tend to see such problems as isolated phenomena. They are horrified with wife battery but have little sense it is widespread, or that they have an individual responsibility to act. These perceptions were put forward by a family practice physician who works with seven other doctors. Although officially in practice together, these doctors tend to work one-to-one with patients, in confidence, and do not generally share issue-oriented concerns with one another. Another doctor said the average G.P. does not have a sense of the extent of incest and battering problems. "A social problem beyond their province" was the way yet another general practitioner described the response of many of his colleagues to an issue like wife battering.

In psychiatry, psychology and medicine, informants said their training encourages practitioners to focus on individual symptoms, to label patients, and to treat the symptoms without seeing them as the possible result of something like battering. Depression was cited as an example - one informant said doctors label many depressed women as "a depression with relationship problems," and subsequently prescribe pills and therapy without considering the fact that the depression may be caused by battering. The assumption made is if the depression would go away, a woman would have a happier marriage.

A female psychiatric social worker, reflecting on the focus of her professional training, said the question is always aimed at women and the

question is, "Why did you stay - why didn't you do anything about it?" She attributed this focus to the training of women in general, saying: "I think we as women are generally trained that the marriage and family are our spheres of influence, so we see anything that goes wrong as our fault."

An obstetrical nurse said simply that battered women were never mentioned in her training.

(b) The need for, and effect of, in-service education on battering

As already indicated, all informants said more in-service education was needed by their colleagues. Some said as education occurred they could observe attitudes and practices changing. A clinical nurse specialist in psychiatry said that as more psychiatrists in her hospital became aware of the effects of sex-role stereotyping and socialization of women, their practices with female patients and colleagues changed. She made specific reference to the term "hysterical female" and said: "Female colleagues really get angry with them if they talk about the hysterical female any more - but five years ago that phrase was spoken very often. I don't hear it barely at all anymore." She also said publication of a particularly insightful article on wife battering in a recent issue of a psychiatric journal led to a rounds presentation on the issue and staff eventually agreed, "We're going to have to look at every case of female depression in a different light."

At another hospital, however, an in-service workshop on battering was poorly attended and the person responsible for arranging it admitted that nurses need something beyond procedural training because "if they still have a blaming-the-victim attitude they won't get anywhere." She saw a lot of what goes wrong with battered women as indicative of the way women are generally treated in society.

A procedure for dealing with battered women had been set in motion in one hospital's emergency ward, so the head nurse was able to say that all nursing disciplines there were aware of wife battering and knew how to recognize it. Practices included nurses referring battered women to social services, assisting with police, arranging for women to get into transition houses, charting detailed descriptions of injuries, ensuring a photographic record of injuries was made, and tagging the battered woman's chart on admission. She said her department was assisted in its work by having access to a good social service department, but added this

wasn't always the case at other hospitals. According to her, the Registered Nurses' Association of B.C. and the Emergency Nurses Group of B.C. had developed policy and practice for dealing with child abuse, but she was not aware of similar developments for wife battering.

Staff members at a mental health community care team said other staff did refer women to transition houses if they were aware of the service; otherwise they didn't know what to do and often gave advice reflecting counselling skills inappropriate to battered women's needs. These staff members specifically noted that colleagues fall into the trap of saying, "If you won't leave, or do something about this, then I can't help you."

The College of Family Practice could be a focus of change, said one family practice physician. Noting its concern about the total patient and preventive medicine, he commented: "The only place I'd expect to find an article on wife battering is in the family life journal."

(c) Emphasis on children

Psychology and public health practitioners commented on a tendency of their profession to focus on the needs of children over the needs of adults. "More attention is being paid to kids in regards to battering and sexual abuse," said one psychologist. The rationale for this apparently hinges on the belief that as adults, battered women can change their situation, whereas children cannot.

Public health nurses commonly find out about battering from children at school. They usually then contact the Ministry of Human Resources for they see the issue being a child in need of protection - or at least in need of an assessment for protection. The Ministry's mandate is the care and protection of children, so of course the battered mother's needs, if seen at all, are seen only in the context of the child's protection.

V.B.3. Present model of practice

(a) Description and derivation of present model of practice

The process of this research involved the development of two models of practice prior to the interviews. The first model is a description of present practice of health professionals in regard to wife battering. The second model, described in Section V.C., is a proposed model of practice.

The model of present practice was drawn up in several stages. First, information was sought about the operations and services offered by various parts of the health system to any patient or client, including battered women. This data was gathered from mental health care teams, public health clinics, outpatient clinics, emergency wards, hospitals and doctors' offices. All were asked: Where do you receive referrals or clients from? What general services do you offer now? What written policy or training exists regarding wife battering? What is the known practice of management of battered women? What individual practices are you aware of? What problem areas can you identify on this issue?

Analysis and clarification of this material constituted the second stage of model development. Another chart was drawn up placing the battered woman at a direct-access point of entry into the health system - a point at which she could enter the health system without having to be referred. Three such points were identified - her physician's office, an emergency ward, or an encounter with a public health nurse. Using other information gathered in stage one, the battered woman's path through the present health system was traced. This chart, entitled model of current practice was shown to health professionals during the interviews, and any inaccuracies or additions were noted. The chart on page 186 shows the current model as presented to informants.

(b) Response to present model of practice

Health professionals' responses to the present model revealed a continuum of service delivery to the battered woman. Some said the model was completely accurate and reflected just what went on in their workplace. Others thought it somewhat rigid, especially when it came to referring women to community resources. There were also some differences in resources noted between lower mainland informants and those interviewed in the smaller community.

Specific mention was made by medical, public health and mental health practitioners of the fact that, contrary to the model, some doctors do refer battered women directly to transition houses or other community-based resources. Said one doctor:

> The system doesn't always go into restrictive models like this. I remember working at St. Paul's in 1973 and even then we didn't just

> release people if they wanted help; we didn't have a transition house then, but we sent people to the 'Y'. In my practice today I would consult or refer to transition house, or the MHR if the woman was on social assistance.

Another general practitioner counsels battered women himself as he doesn't see family counsellors as being terribly effective:

> The battering is the problem. Psychotherapy is needed if the person is incapable of dealing effectively with the problem - people who think they deserve to be beaten. That's why I go for the lawyer first and get all the legal leverage possible on the guy. In point of fact I don't remember sending people to counselling...I have an idea I don't see much concealed battering.

However, others said their experience led them to believe this was not generally the case. A psychologist and emergency nurse said, "Doctor's don't ask the question, so the referral never happens." Another psychiatric nurse clinician commented that referrals made to her by G.P.s seldom stated battering as the problem: the patient was usually described as "a depression with relationship problems."

Also contrary to the model, some emergency departments do refer non-admissible clients to other resources. This is done by the emergency nurse or by the social service worker called in for a consultation. Police, transition house, community care teams and MHR were noted as places battered women might be referred to by the hospital.

The largest deviation in the present model was found in public health. The model suggests that women might meet with nurses and perhaps discuss their battering during home visits or at baby clinics, but we found most public health nurses have battering brought to their attention through their work in public schools. They are told of the battering either directly or indirectly by the child, or sometimes by the child's teacher. The public health nurse we spoke with said:

> Upset kids will tell me, or tell the teacher who will in turn talk to the school nurse. Sometimes kids actually say 'Mommy's being hit' or exhibit behaviours that will make the nurse talk with them a bit more.

She said very few battered women were seen at baby clinics and further noted many women never come to such clinics - especially those who are

already feeling isolated, or those who have difficulty speaking English.

Informants said the lack of perception of battering by public health nurses working in the community was a reflection of continuing cutbacks in home and one-to-one visits, ostensibly due to budget restraints, and a reflection of the general lack of awareness on the part of public health nurses themselves. "To be honest with you," said one, "public health nurses don't have a very high consciousness level about all of this." " I don't think you quite understand how ignorant public health nurses are - you're lucky if they pick up on a case of gross child abuse," was the comment from another health professional - an obstetrical nurse.

A doctor experienced in public health unit procedures said: "The general practice was that when public health nurses were allowed to do home visiting, and if the nurse had any kind of raised consciousness, she would be able to help battered women with information and support." When questioned how practices had changed, this doctor stated the new medical health officer in the city "is not interested in one-to-one work, and there's been a real decrease in service." An associate nursing co-ordinator of one of the health units commented cutbacks meant nurses were being mandated to do tasks that address the larger population. "One-to-one work is going to the wind - public health is going to be population-centred rather than family-centred." She did say that pre- and post-natal care would continue.

In the present model of practice it is noted that public health nurses may refer clients to social workers within the health unit. However, informants told us that nurses don't always refer to these social workers because they are "just counsellors - not social workers... they refer to MHR." As well, many public health units do not have a staff social worker.

In summary, the present model of health practice was found to be a generally accurate description of the experience of health professionals interviewed except for modifications described in the public health area.

### (c) Formal and informal practices shaping health professionals work with battered women.

Informants were asked to describe any other formal or informal departmental or individual practices that served to shape their

work with battered women. All informants were able to describe such practices.

(i) Institutional Practice

New priorities and budget cutbacks have already been noted as general policies affecting the interaction between public health nurses and clients - some of whom may be battered. As well, the fact that the focus of their work is the health of babies and children also affects their ability and willingness to work with battered women, even though one would think the link between the health and safety of the mother and the health and safety of the child would be apparent. Of course, the linkage is apparent to some public health staff who do involve themselves in home visits with battered women who have been identified through some avenue of public health. One such practitioner said she always leaves her own phone number and the transition house number with the woman, takes time to help her assess her situation and assists with resources and referrals. She said, "It's important for the nurse to provide a supportive link at this stage - to provide information to her." She went on to say:

> I remember a situation where I had worked with a woman and helped her leave - finally she moved out for good. A year and a half later she moved back in. She called me recently and said, 'It's happening again.' I was sad for her, yet glad she could feel she could call me again and not feel dumb or bad about it.

Two practices concerning battered women were in place in the emergency ward of a large metropolitan hospital. If the woman wished to talk about her battering, the nurses made a practice of calling in the social worker, which they could do without doctor's orders. The nurse we spoke with reasoned that "as nurses we represent an authority figure to her, and she's had a lot of those. It can be really scary for her. We think it's a better idea for her to talk with someone in street clothes, who's not a medical person." At night the social service worker is on call, available for phone or in-person consultation. The policy of photographing victims of child abuse has carried over to victims of wife battering. So has the practice of keeping detailed descriptions of injuries in the medical charts. The head nurse also commented that her own policy for the department is, "The patient is always right until proven otherwise," which could be seen as helpful to battered women.

Other institutional practices can only have less beneficial effects. In another hospital, any referral to a medical social worker is made only on doctor's orders and apparently in the past doctors have instructed nurses to prevent a medical social worker from seeing a patient. Professionals familiar with these directives say they occur because of physicians' involvement with the family as a whole, their dislike of going to court and their need for control.

Other comments reveal the breadth of power many physicians have over the ongoing care of their patients. A psychiatric social worker at a hospital outside of Vancouver said:

> All referral in the hospital system is done by the G.P.s. If you know someone needs to see you, you can sometimes persuade the doctor to refer. When you are talking about what happens to someone in hospital, the only input that is recognized is that of the G.P. They rarely talk to nurses or read charts. If a patient is admitted for condition X, all they want to know when the patient comes in is if condition X has improved. Also, many patients have a family doctor so he is often the husband's doctor as well. Doctors often know that this [battering] has been going on, but they don't do anything. If I'm outraged at finding this out, or a nurse is, the doctor may have known about it for years and see it as a normal part of the marriage.

If a physician chooses not to investigate the possiblity of battering, or rationalizes it on the basis of the woman's "behavioural" problems - or even refuses to refer her to other resources - then he or she is putting the woman's health - and life - in danger.

Informants also said physicians working in emergency services will treat a battered woman's injuries but will leave any discussion about her situation up to her family doctor, ostensibly so as not to be seen as "taking over a case." Unfortunately this practice only encourages a battered woman to avoid talking about or raising the issue. After all, she may tell herself, if the doctor in emergency didn't ask any questions, then maybe it is "all in my own mind," "my own fault," and "no one would believe me anyway." For medical staff to fail to identify battering, or at least not to ask the question about battering, is to tolerate and condone battering as acceptable behaviour and is certainly not a practice that protects the woman.

One physician said he was allowed four "counselling" visits per year (for which he is paid twice the amount of ordinary appointments) and this affects the amount of time he takes to establish rapport and examine a patient. He said it would take him a half-hour to "get into this thing" and went on to comment: "If they book in with a sore arm, and it turns out to be battering, we have no time. So we say, 'Come back next week and we'll talk about it.'" He suggested that expansion of the counselling visit schedule might be helpful, but also said some doctors already abuse it, billing for a counselling visit "when it took them five minutes to throw a bit of advice at the patient." Apparently, if patients use up the cousnelling appointments, physicians are able to charge only the regular appointment fee for any visit longer than the allotted appointment time.

Ministry of Health priorities for mental health professionals, said one informant, hinder development of special programs at the community mental health level which could address "women's problems" - battering, rape and incest. Ministry priorities were listed as: (1) long-term mental illness where the person is not self-sufficient; (2) the acute mentally ill; (3) children who are seriously disturbed; and (4) consultative sessions with people in other agencies who provide counselling. Community mental health budget restrictions also affect the kind and amount of service practitioners can offer. This informant said: "We wouldn't dare advertise that we deal with these problems; we couldn't possibly provide a service for all the women who would come." This practitioner realizes the magnitude of the issues mentioned above, and knows women would come for help, but feels unable to even begin to respond appropriately because of time and budget priorities that are out of his control. Therefore, not only do women not know of the potential service available through this mental health unit, but they also run the risk of being categorized as mentally ill, or unstable, in order to fit the priorities for counselling.

(ii) Personal practice

Most health professionals are on their own to respond to women's needs as they see fit and as they understand the issue of wife battering. This has varying repercussions for battered women and the interviews reveal that variation.

For example, a doctor in family practice noted how she now routinely asks women whom she suspects are victims of battering if this is actually the case. She admits it is a hard and threatening question, but says she was encouraged to ask it through experience with patients who had been battered and referred to her from Transition House. She explains that there have been some defensive reactions to the wife battering question. But she continues to ask it because she wants to let women know she can help them and that "their world won't necessarily fall apart if they answer yes."

Another physician says: "I have found it very helpful to keep after the police myself on behalf of patients," a practice indicative of his working knowledge of other systems in his community, and certainly a practice helpful to battered women.

One psychiatric nurse clinician's strong belief in self-help groups, together with research knowledge personally gathered from women's and community groups, has led her to the practice of giving clients the option of attending community-based self-help groups for battered women, and encouraging them to read and discuss articles on battering during the counselling sessions they have with her.

It is fairly common for a physician to have both husband and wife as patients. This can have unfortunate ramifications for battered women. One doctor said,"You don't want to take sides because very often the husband is your patient." However, if "taking sides" means he cannot or will not offer support to a battered wife who is his patient, then he will be unable to offer her real assistance and protection. Ideally, the physician should refer her elsewhere or stop seeing her husband.

The practice of working with couples in a community mental health setting has led to a particular perspective on treatment by another health professional - a mental health practitioner. He describes "the fine line between offering support and understanding to the wife, and at the same time offering support to the husband, and at the same time saying that beating up on a woman is intolerable." He further notes, "If you align with his wife, you are taking from him something he perceives as his." He pointed out that when the woman leaves his office, the practitioner cannot protect her. Therefore, he believes in the saying, "first do no harm," and doesn't see himself as an advocate - unless the woman is

actually being threatened, or has come to him on her own saying she wants out of her marriage.

Expertise in working with vicitms of rape and incest has affected the way another psychologist works with battered women - whom she usually sees without their husbands:

> I'm quick to pick up references to abuse. You know, you have to teach people that it is a problem and it's not to be tolerated. They will throw little things out to me and kind of ask if I think this violent behaviour towards them is bad, or a problem, or worth them worrying about. You have to be clear as a therapist that it is a problem, and speak to that and believe it yourself. If you have any doubts about it yourself then their cues will slide right by you.

She went on to draw parallels between incest and battering victims, saying that any reference to abuse means there is likely much more going on; that changes in her story means the woman is fearful of opening up; that victims are afraid and will lie to protect themselves. She ended her comments by saying:

> It's also important to be very clear, as a therapist, about your judgements about him to her. You must be clear to her that you think he is wrong in hitting her - you have to let her know that over and over again.

The experience and practice of these informants, one choosing only to work with battered women, others working with battered women and their husbands, clearly leads to different counselling interactions with battered women and obviously quite different outcomes. It would seem that a battered woman's mental and physical health is better protected when she sees a counsellor without her husband present.

### V.B.4. Summary of current practice and present health model

All health practitioners interviewed for this project stated there wasn't enough protection for battered women, and they grounded this statement in their own experience. They focussed their concern about lack of protection on inappropriate police response, inadequate follow-up facilities and resources for battered women, and lack of understanding of the issue by their colleagues.

Informants stated that the attitudes of health professionals toward the issue of wife battering is shaped by training which is family or individual oriented, socially non-interventionist, and focussed on the needs of children over the needs of their battered mothers. Unless specific policy and practices regarding treatment and management of battered women have been set up, their predicament and needs take second place or are invisible to the health practitioner. Some individuals do practice useful and sensitive intervention methods, but by and large these remain individual informal practices and are carried out without the support of colleagues and departments.

When shown a model of the present health system's interaction with battered women, there was general agreement on the structure of the interaction, except in the area of public health. Practitioners in this field have the health of children as a main focus, so direct work with battered women is not as likely to occur as we had originally stated.

When asked the question,"How do you respond to battered women in your work?" health professionals described departmental and individual practices that could have both beneficial and detrimental effects for victims of battering. These ranged from individuals taking the responsibility of finding out if a client is battered and then referring her to appropriate resources, to departments encouraging practitioners to refer battering reports to the Ministry of Human Resources as a protection to children.

All informants agreed specific professional education should be made available to colleagues. Such programs could be generally focussed, such as use of radio and television, posters and pamphlets for offices and clinics, general public education, as well as specific in-service training and protocol handbooks for various components of the health system. Informants often referred to present child abuse education (policy handbooks, workshops and so on) as a model that could be used for development of education on wife battering.

## V.C. HEALTH PROTECTION MODEL

### V.C.1. Description and derivation of model

The health protection model developed for this project takes the form of a seven-page handbook (see pp.203 to 206 ). It begins with a definition of the problem of wife battering from the perspectives of both the battered woman seeking help from the health system, and the health professional seeking to assist a battered woman. Three sequential solutions or reponses are listed with specific details appropriate for medical doctors in private practice, emergency room personnel, public health unit staff and therapists.

The lack of identification, and the mis-identification of battered women due to ignorance, inappropriate diagnostic skills, or misunderstanding of the manifestation of battering often leads to inappropriate treatment and referrals. Therefore, the first section of the health protection model is entitled Identification of battered women utilizing specific assessment and interview skills. This section deals with descriptions of physical and psychological injuries and contains a detailed outline of basic interview and assessment skills to use with all suspected or known cases of battering by any intervening health professional.

The second section of the model, entitled Knowledge and use of possible health system protection, consists of specific procedures and actions which, if undertaken by health professionals, would offer varying forms of protection to the battered woman. Included are guidelines for emergency room staff, private practice physicians, public health staff, community mental health staff and therapists.

The third and final section of the model is entitled Provision of appropriate referral assistance for battered women and details where to find and how to use appropriate local resources for battered women.

### V.C.2. Response to the proposed health protection model

After informants had reviewed the model of current practice, each was shown the health protection model. All informants were asked to read it and comment generally and specifically to their own area of practice.

FIGURE VIII (page 1 of 4)

-1-

HEALTH PROTECTION MODEL

Systematic application of assessment, examination, and interview procedures specific to battered women combined with active protective use of the health system and appropriate follow-up referral and resource use could result in increased identification of battered women and more effective treatment and assistance.

-2-

PROBLEM

-battering not presented directly, or not presented as a problem by woman,

-question about battering not asked by health professional,

-battering underplayed or denied by patient,

-battering account not believed by health professional

-victim blaming by victim and/or health professional

-inappropriate referrals made, no referrals made, or referrals made and woman does not act, cycle begins again.

HEALTH SYSTEM POLICIES AND PRACTICES COULD OFFER:

-assessment and interview skills specific to the situation and needs of battered women,

-knowledge and use of ways in which the health system could offer actual protection to battered women,

-appropriate referral and resource assistance to battered women.

## I. IDENTIFICATION OF BATTERED WOMEN UTILIZING SPECIFIC ASSESSMENT AND INTERVIEW SKILLS

### A. Injuries

1. Physical

-injuries will often be minimized by woman and/or her husband/partner

-injuries will sometimes appear untended, i.e. old untreated fractures etc., as battered woman may delay having injuries treated

-serious bleeding injuries are common, especially to face and head, and to internal organs

-single or multiple bruising to any or all parts of the body is common

-breasts, chest and abdomen are often specific target areas, especially if battered woman is pregnant

-burns (appliance, stove, cigarette, scalds, acid) are common

-physical injuries presented could be any of these, or a multiple of these, and may also appear in combination with "psychological injuries".

2. Psychological

-battered woman may describe or be experiencing acute anxiety attacks resulting in heart palpitations, hyperventilation, severe crying spells

-battered woman may describe or be experiencing depression, state she is "unable to cope", feels isolated etc.



### B. Asking the battering question: dealing with the answer

1. Basic questions and comments to use with all suspected or known cases of battering by all intervening professionals

-interview and examine the battered woman alone (especially important in emergency room).

-ask the battered woman directly if her injuries are the result of a beating, abuse, hitting. Bear in mind that the word "beating" may sound too dramatic to some people and they may describe it as "just being slapped around" etc.

-do not be judgmental, especially if she denies the battering, is silent or self-blaming. She may not feel that it is safe or appropriate to do anything else.

-encourage the battered woman to speak and take her seriously when she does.

-ask the battered woman about her present safety, find out if she has a safe place to go when the next battering occurs.

-tell her she is not the only one being hit; that this happens to many woman; and there are people she can talk with about protection, support, help, and that you can refer her to them.

-assure her that the battering is not her fault; that men hit their wives for many reasons and that it is his problem. No one deserves to be hit no matter what they do.

-do not expect her to wish to make a firm decision immediately about seeking help, making changes, laying charges etc., but let her know there are some options, and other women she can talk with who have been through a battering situation.

-give her immediate resource information, i.e. a small card with the telephone number of a Transition House, Emergency Shelter, Women's Centre, Crisis Line or Support Group on it. Often battered women will tuck this phone number away and call it at a time when they feel safe, particularly threatened, or ready to make a change.

## II. KNOWLEDGE AND USE OF POSSIBLE HEALTH SYSTEM PROTECTION

### A. Private Physicians and Clinics

-given the confidential relationship that usually exists between physician and patient, the battered woman may consider her doctor the only possible confidential and safe contact to make regarding her battering. The physician's office may be a place of first disclosure on her part, and should be offered as a place of disclosure on the part of the physician.

-the physician's support and respect for the battered woman's situation and safety may well be the first indication to her that the battering is serious and not her fault and will often help her consider alternatives.

-the fact that it usually takes some time for a battered woman to leave her situation (if that is her final wish) does not mean that she does not want the battering to stop, nor does it mean she is not already trying to stop the battering.

-prescriptions for tension relieving and mood altering drugs may endanger her if she is still in the home as she needs to be as alert as possible.

-physicians should know what resources exist in the community for battered women and should refer women to those resources. Usually Transition Houses, women's support groups, women's centres and crisis lines have knowledge of legal, social service, counselling and protection procedures available to battered women. It is estimated that one in ten canadian women involved in a relationship are battered, therefore most general and family practice physicians will see battered women, known to them or not, quite regularly.

### B. Emergency Room Staff

-always examine the woman alone (unless an advocate is accompanying her) as this gives emergency staff the opportunity to assess for battering. Often a battered woman will not wish or be able to discuss her injuries with her husband or another family member present.

-tag the battered woman's chart (even if you only suspect battering) in order to alert other staff. If the battered woman is admitted, then all staff will be able to deal more effectively with patient's physical and mental condition, family members etc, if they are aware of her battering.





-note all details of injuries and all details of the description of how injuries were incurred on the battered woman's chart. As in cases of child abuse, these charts may serve as legal evidence if necessary.

-whenever possible, the battered woman should be admitted to hospital. This will hasten her healing process; confirm the seriousness of injuries to herself and the batterer; and provide an opportunity for the hospital to offer protection and services, i.e. referral to medical social worker etc.

### C. Public Health Unit Staff

-Public Health Nurses and Social Workers have unique access to the home of women who may be being battered. Although this access is usually through children, public health staff should take the opportunity to begin the assessment process if they suspect battering, or if the woman raises the issue herself. Support, resource and referral information can then be offered directly to the woman.

-in many cases of child abuse, wife battering is occuring at the same time. Often, the fact that the child has been hit will be the "last straw" for battered women and they will seek protection. Because public health staff work so intensely with children in the community, they should be aware of the inter-relationship between child and wife abuse and be able to begin assessment procedures for both situations.

### D. Therapists, Community Mental Health Staff, Counsellors etc.

-because wife battering is often characterized as a psychiatric or emotional problem for women, and because battered women may exhibit symptoms of "depression" or "anxiety" as a consequence of the physical and psychological assaults they have suffered, many battered women are referred to mental health professionals. It is critical for these professionals to understand how the practice of focussing on individual symptoms, or the prescribing of tranquilizers can blur the causes of the woman's suffering and obscure the problem of wife battering. Once a woman is labelled as having a psychiatric problem, it may be even more difficult for her to get the help she needs to deal with the basic problem - her husband's assaults.

-recent research into psychotherapeutic work with battered women has provided new and useful perspectives for mental health practitioners. Theories of victim provocation and masochism do not assist the battered woman in moving towards an understanding of what is happening to her, therefore they do not offer protection to her mental health. Mental health practitioners should become aware of the recent work on battering, or refer clients to other practitioners who are doing this work.

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## III. PROVISION OF APPROPRIATE REFERRAL ASSISTANCE FOR BATTERED WOMEN

### A. Resources

-all health system professionals should know what resources exist for battered women in the community. Often a women's centre, women's group, or crisis line will have this information. Such resources usually take the shape of a Transition House, Emergency Shelter, Battered Women's Support Group, Legal Advocacy Group etc. Battering is not an isolated phenomena, one in ten canadian women in a relationship are being battered so this means all health professionals see battered women regularly during the course of their work.

-display brochures, phone number cards etc from Transition Houses and women's support groups in your office, clinic or ward.

-consult with women's groups focused on battered women and with family violence task forces. These groups are often available for in-service or public education.

### B. Referrals

-refer on a battered woman to another counsellor or service more experienced with the problem if you find yourself angry at the victim or having difficulty with the issue. Not everyone can counsel battered women.

-almost all organizing and provision of services around the problem of wife battering has come from community women's organizations rather than internal policies of the legal, social service and health systems. Because of this particular expertise, health professionals should utilize these community based groups when making referrals for battered women.

(a) General response

All informants agreed the model was a coherent and useful document. "It's about time this was done," said a head nurse in emergency, and added, "I'd like to see it come out in handbook form, like the child abuse/neglect handbook, and made available to emergency, doctors and social services." Some referred to specific sections they found useful. "This whole interview procedure section is really good," was the comment of a psychiatric nurse clinician who said she finds it difficult to work with battered women when they take a long time before deciding to move out of a battering relationship. Her comments were echoed by an associate nursing coordinator of a public health unit who agreed the interview skills section was important - "It's important to acknowledge their feelings... we can't just dump them when they can't move out right away; obviously they have something invested in the relationship." A family practice physician said, "You're right about the general education needed; we all need regular complete in-service on battered women."

Due to the fact that many battered women are labelled "crazy" by others, especially their husbands, a psychiatric social worker expressed concern about the part of the model encouraging admission of battered women to hospital, largely because "the only place available in a bed shortage is in psychiatry, and this can be a weapon for the husband." However, a physician agreed that at least the woman would be safe in hospital, and admission would maximize the attention she might receive. Reflecting the different workplace realities of doctors and nurses, an obstetrical nurse pointed out, "There isn't staff enough for anyone to spend time talking with a patient; it would be hard to keep track of a battering husband if he came to visit. And you won't see an acute care centre admitting her if there are no beds." Lack of beds did not pose a problem for another doctor however, who said, "Anyone requiring medical care will go the surgical ward, even if it means a fifth bed in a four-bed ward." Whatever arrangements are made regarding admission of battered women to hospital, it seems clear that appropriate care depends not only on educated staff, but adequate numbers of staff.

Most informants liked the idea of tagging the battered woman's chart in the emergency room, but one said the battered woman should be told this is being done "even if you only suspect it, which is difficult." She

reasoned that the woman is already feeling out of control of her life and needs to be treated as an adult.

The "asking the question" section of the model was commended by many informants - "this is very good," said one, "I think battered women feel as ashamed of being battered as rape victims feel about being raped, and we apply the same theories of victim precipitation to them both."

(b) Specific additions

Informants made additions to the model in four areas: professional education, services, procedures and knowledge.

As well as stating the need for more in-service education for all parts of the health profession about the dynamics of women's oppression generally and wife battering specifically, informants said resource material such as posters, pamphlets and bulletins should be displayed in offices of health professionals. Doctors' offices were cited as an ideal place; hospital wards another. Another informant said, "We don't talk publicly about wife beating as a bad thing - there's no hot line for battered women, no media stuff." She felt information displayed in public places - billboards, bus advertisements, posters - would educate the public and be heard and seen by battered women who often think they are the only ones being hit. Another likened the isolation of battering to that of incest and observed:

> Incest victims have said if they had seen a billboard saying, 'If your father fools around with you, call this number,' they would have called. I think that if a battered woman saw one that said, 'If your husband hits you...' they would call too. Just by displaying the transition house poster in my office I got some questions from women that I had not suspected were battered.

Emphasis was placed on reaching out to immigrant women with a public and multi-lingual approach because of the double isolation they experience. A public health nurse commented many immigrant women with children don't avail themselves of basic services, such as baby clinics, due to language difficulties.

The need for battered women's advocates, especially in emergency wards, was stressed by informants familiar with the trauma experienced by

rape victims in hospital. "We need advocates...people who could help with support and legal advice." Workers at a community care team office said it would be ideal if transition houses had a "flyer person - someone who could come down to the emergency ward and talk with the woman right then." Informants agreed medical social service functioned this way in some hospitals but questioned the availability of such services at night "when the women come in."

Several procedures or protocols were suggested as additions to the health protection model. Some of these, such as evidence protocols, mandatory reporting of abuse and photographs of injuries, are similar to existing child abuse procedures. "Doctors should have some kind of form to fill out in emergency to give to the police - like they do with a 'regular shooting'" was one such suggestion, although another informant, a medical doctor, said doctors wouldn't take the time to fill out such forms, saying, "Doctors are a funny breed, getting their backs up when someone tells them how to do something."

Another suggestion was the use of body charts on which a nurse or doctor would mark the traumatized area, sign the chart and have it counter-signed by another nurse or doctor, and file it in the patient's medical records ready for court use if necessary. One doctor noted the courts would probably only accept body charts signed by doctors as admissible evidence.

A physician familiar with the ongoing health problems of battered women stated a complete health assessment should occur at the <u>beginning</u> of the woman's transition stay, when effective treatment could commence right away. She based this on her experience of seeing health problems emerge soon after the immediate crisis bringing a woman to transition house is over. She said the onset of these medical difficulties sometimes acts as a last straw and encourages the woman to return home to a familiar environment that includes the family doctor. She said a medical health assessment undertaken at the beginning of the transition or second-stage-housing stay would help the woman see her health in the context of the battering, and protective measures could be taken.

The dilemma of patient's rights and physician's control was raised by a mental health professional who said:

> Whenever there is a person in hospital who shows signs of battery, all the professional groups

> should have the right to 'case find.' The doctors shouldn't control this. The social work associations should insist on their right to access to a patient in hospital. The nurse in admission should be able to call a social worker and let her know about a patient. Doctors should not be able to refuse a patient the right to see another professional. After a group of people have seen the woman at the hospital, they should sit down together and discuss the case and devise a discharge p... involving community agencies.

The problem here lies in ensuring the woman maintains some control over her situation, yet at the same time ensuring that appropriate referrals are made. Diagnosis of a malignant tumour means automatic referral to specialists; diagnosis of battering, sometimes just as life threatening as a tumour - if it occurs at all - does not necessarily ensure referrals to anyone.

Several practitioners gave additional assessment guidelines. One stressed the need for counselling or therapy work with battered women to be considered specialized work. "I have some concerns about specialization - I want the whole area treated as a serious problem. I don't want everyone to do it," she said, pointing out that some therapists are noticing that this kind of work with battered women is "in" and that "they are setting themselves up to make money out of it." She went on to comment on counselling practices for batterers and her comments provide another perspective on counselling for women. She stated:

> There should be counselling for men, and it should be specialized as well. The problem exists in men and the long-term solution is that they must change...men by and large have been victimized by other men and they take it out on women. So far the focus of their treatment has been on fear of women, mothers, et cetera, and that's bullshit. The issue is men's competition with other men. The crux of the issue is the men... once you're not blaming women the whole thing changes.

V.C.3. Summary - Health Protection Model

As health practitioners reviewed the protection model they were immediately able to apply the principles and practices of the model to their own work. Additions suggested included: more in-service education

on wife battering; emergency room advocates for battered women; initiation of evidence and reporting protocols in hospitals and clinics; provision of complete medical health assessments for women in the early stages of their transition out of a battering relationship; and expansion of sections dealing with counselling.

## V.D. ISSUES EMERGING FROM THE INTERVIEWS

The focus of this project was to describe ways in which legal, health and social service policy and practice could be changed to promote actual protection for battered women. The health model described in the previous pages provides information about attitudes, skills and knowledge that our informants agree would be useful in their identification, assessment, treatment and referral of battered women. However, health professionals do not work in a vacuum: their work, to be most effective, needs to dovetail with procedures adequately carried out by other systems. And appropriate services must be available if the health professional is to include them in her/his prescription. Finally, battered women must be visible to the health professional: examination of some practices described by informants indicate instances where women, battered or not, are actually invisible to the practitioner, except in relation to their work in the home with their children. These three factors: invisibility of women, inappropriate referral services, and inadequate protection procedures by other systems are further hindrances to the provision of protection for battered women by health professionals and are discussed here as issues arising out of the interviews.

### V.D.1. Lack of ongoing services for battered women and their children

Excluding mental health professionals, most health professionals interviewed treat physical injury, disease, or symptoms of those, then dismiss patients or refer them elsewhere. When there are no other services, or only limited services, the effect in wife battering situations is equivalent to asking a person to go for a strenuous walk immediately following major surgery. Relief from battering requires the use of specific follow-up services, and these must include assistance for children as well.

Community-based transition houses are the first crisis intervention requirement and they must be funded and staffed adequately. Allotted funds must be sufficient to include childcare staff to work with mothers and children during their stay at the house. As well, long-term or second stage housing should be widely spread throughout the province. This would provide the variety of accommodation necessary to meet the needs of

these families - women and children - who are struggling to make a new and changed life for themselves. Women's economic dependence and the fact that they usually have nowhere else to live are two reasons why many women are forced to return to live with battering husbands.

As well as safe shelter, battered women often need ongoing support-group services to protect them from the negative image of themselves that has been painted for them by others, and often by themselves. A transition house worker said:

> Battered women think of themselves as barely keeping their heads above water and when their husbands find them, and they still feel so shaky, they go back to him. Contact with other people is a form of protection - protecting yourself from a negative self-image, from your fear.

A psychologist added:

> The ownership and jealousy thing he does is as detrimental to her as anything else - it makes her feel unsafe with her own self and she won't be able to feel good until she feels good in herself.

Support groups can be part of the work begun at transition and second stage housing, if funding and staffing is adequate. Community-based groups, such as those offered by Battered Women's Support Services in Vancouver, are also a useful resource for battered women and for those wishing to train as support-group leaders. Long-term funding of this work would ensure consistent service delivery and training. It should be possible for groups such as these to contract with the Ministry of Human Resources, or Ministry of Health, to provide staff training as well.

Several informants noted the need for development of ways of working with the children of battered women. They saw the first step being protection for the mother and the child(ren). One nurse said:

> I think the kids need help in conjunction with their mothers getting help. There should be some intensive modelling. Kids learn that violent behaviour is normal behaviour. Any kid who has been through this is traumatized; we need some special services...maybe some groups for children, for them to talk about their own experience.

This nurse went on to talk about the difficulties arising for children when the court orders access to the battering father. She said:

> I think it's a mistake to think kids need to be around a father if he is violent. Kids feel guilty saying 'no' to Dad - they would find it hard to say, 'I don't want to be around Dad.' I think courts should order a cooling-off time when kids do not see the offending parent.

She felt custody arrangements should put the rehabilitative and emotional needs of the child first, as a form of ongoing protection for both child and mother. This is important in view of the way some fathers use their visit with the child to argue about the mother, to try to find out where she is, or to pressure the child into returning to the father.

This perspective was shared by a mental health professional who said he didn't understand the current access situation, especially since recent research indicated a link between battering and incest problems in families:

> A man who is a batterer, what possible good could come of the child seeing him? It's not in the child's interest - only the father's.... They say it is in the best interests of the child but it is really the father whose 'rights' are being protected.

V.D.2. Lack of appropriate protection services from other systems

The only institution or system having a legislated mandate to act on behalf of battered women is the criminal justice system. Police officers, as front-line workers in this system are most likely to be called on by health professionals dealing with a battering crisis. And, of course, police are called by the woman herself. The job of the police is to keep the peace, protect life and property, investigate the alleged offence and apply the criminal code where necessary.

The charge of common assault is usually used in wife-battering cases. These charges must be laid through a justice of the peace by the assaulted person. Often if a woman says she wants to lay a common assault charge, the police will write a report of the investigation and accompany her to the J.P.'s office. The problem raised by informants in our interviews

revolves around their experience with police officers refusing to attend at a hospital or home unless the woman actually said she would lay charges.

Chapters two and three of this study describe in detail the problems faced by battered women and police in laying charges and keeping them laid. Obviously there is a range of opinion as to how this problem could be solved. However, even if a battered woman decides not to lay charges against her battering husband, her situation is worthy of police attention. Reports can be made and filed for future reference, photographs can be taken, correct legal advice and encouragement can be given, immediate protection can be offered - all within the mandate of police work. Just as police know an emergency department will respond to battered women, hospital and other health professionals need to know a battered woman will receive the best support and protective efforts of the police, no matter how many times they may be called, and no matter what the woman's decision about charges may be.

The same is true of Ministry of Human Resources and other services offered by health professionals who may not have a legislated mandate for protection of women, but clearly have a responsibility for working with people in need. Many of our informants, especially those interviewed in the smaller community, described how they could never be sure of the effectiveness of another system's intervention on behalf of battered women. As a result, they would refer to an individual they had identified as useful rather than to an agency or department. This, of course, is fairly normal practice on the part of many in the helping professions - we all have ideas about who is good and who is not. The problem is compounded, however, when no one, except for transition house staff, has a mandate or policy to act arbitrarily on behalf of battered women. A least with child abuse a practitioner knows action, based on mandate and policy, swings into place when an abuse or neglect report is made. There is no equivalent for battered women.

V.D.3. Invisibility of women in public health practice

A priority focus of the public health nurse is the health of children. This is evidenced by the work of nurses in public schools, health units, baby clinics and with pre- and post-natal care. This work

is often done with the child's mother present. However, because the focus is on the child, the woman tends to be seen only in her role as mother and caregiver. Her own health needs may not even be considered, unless they impinge on the health needs of the child and sometimes, as we have seen, even that link is not made. Concomitant with this focus is the fact that one-to-one home visits by public health nurses are being cut back, so even those nurses who do take time to go beyond the child and talk with the mother may find it impossible to offer that service.

A shifting or broadening of this focus on children would have implications for the protection of battered women. First, battered women are often isolated by their husbands and not allowed or encouraged to meet people. It may well be, therefore, that the only legitimate interaction a battered woman has with another adult might be concerning her children. The public health nurse, precisely because of her role with the health of children, could begin to break through that isolation and offer "safe" support and advice. Second, home visits, if they are allowed at all, could occur when the husband is not present - offering an ideal opportunity for the nurse to observe the home environment and speak privately with the woman. Third, given the fact so much wife battering either begins or coincides with pregnancy and birth, the public health nurse could, because of her pre- and post-natal care role, appropriately take time to assess the mother's health as well as the baby's. Fourth, because public health nurses do hear descriptions of battering from children at school, they could act on this knowledge and undertake their own follow-up calls and visits themselves, rather than referring the family sight unseen to the Ministry of Human Resources. All of these services not only require a working attitude that sees the mother's health as part of public health, but require adequate staffing of public health units as well.

V.D.4. Physician control over definition and identification of battering

Doctor's control over patient care manifests itself in several ways, with varying ramifications for battered women. As we have seen in statements from informants, medical doctors can choose to work with patients in such a way as to avoid input from the patient or from other health

professionals. Physicians may avoid or avert discussion about battering if it appears to them to be a matter outside of their jurisdiction. This occurs especially when they do not see the relationship between a woman's complaint and the possibility of battering. These practitioners will say they don't have time - that they don't wish to become involved, perhaps because of the possibility of court appearances, or they may themselves believe violence towards wives is a normal part of marriage.

Some women deal with this by using the "by the way" technique - mentioning abuse on their way out the door, or at the last moment of the visit. In this way they make sure they say something for the record (although it may not be recorded by the doctor) and at the same time they justify the minimal response they are likely to receive by saying they didn't really give the doctor much time to deal with it. For these battered women, their doctor's decision to avoid or minimize discussion about battering means continued isolation and certainly more beatings. This situation is exacerbated in small communities where there is not a wide choice of medical practitioners to go to. And ironically, as some references point out, failure by the doctor to probe or listen in cases of battering ensures frequent return visits to the office. (Evan Stark et al., Wife Abuse in the Medical Setting, 1981, p.38)

Sometimes a doctor may be put in a judgemental position by a battered woman - one doctor described how some women mention their battering to him in order to get an idea of his perceptions of it. He said: "Some women require the authoritative permission - I've known some to say, 'That's it, that's all I need, you won't see me about this again.'" Unless the doctor believes battering to be wrong in all circumstances, it is easy to see how the woman could be given other messages, such as "you deserved it," "what did you do to cause it?" or "you should have done something to stop it before now."

Finally, the power of the physician to affect battered women is made most clear when we see how positive encouragement by a doctor helps a woman describe her situation, thus allowing the physician to place her injuries, or depression, or general body pain, in context with the battering and offer protection, resources and referrals.

## V.E. SUMMARY

Protection of the health and lives of battered women has been the focus of this chapter. Wife battering is not healthy: battering injures women, battering makes women feel unwell and can manifest itself in a wide variety of actual illnesses. Battering also kills women. Battered women, however, are not sick per se - it is the battering that makes them ill, or appears to make them ill. In most cases neither are their husbands sick. The danger in setting apart victims of domestic violence and their assailants and dealing with them as sick or different is, as Del Martin says, to miss out on the fact that this is a social problem affecting millions and has its roots in historical attitudes towards women. (Del Martin, Battered Wives, 1976, p. xiv)

So why and how should health professionals work with battered women? The why seems obvious enough. If one in ten Canadian women in a relationship is being battered, then assaulted women are streaming through offices, clinics and hospitals every day. Stark and Flitcraft's data indicate that battering accounts for more than one of every four visits by women to emergency services. Their study analyzed the trauma histories of 2,676 women treated in an emergency surgical service of an urban hospital and found that 21 per cent were at-risk for abuse. Among those patients whose first-visit injuries were traced to an assault by a male intimate, only a small percentage were identified as battered and referred to appropriate aid. They estimate that using current diagnostic techniques, medical personnel diagnose one battered woman in 25. (Evan Stark et al., Wife Abuse in the Medical Setting, 1981, p.7)

As we have discovered, few health professionals actually ask a woman if she is being hit. Not only does this put the woman in danger but it means she is receiving inappropriate assistance from many health professionals. Dispensing of mood-altering drugs, referrals to psychotherapy, mere splinting of bones and stitching of lacerations are not adequate prescriptions for a battered woman in that her health, other than the immediate injury perhaps, is not substantially improved. Furthermore, her ongoing health is not protected.

The how of health protection for battered women presents contradictions. It is crucial to unravel these contradictions and see where more effective practices can be established.

First of all, the injured woman is often reluctant or unable to seek medical help: fear, shame, or not being allowed to get help are common reasons. Secondly, even when an injured battered woman does ask for medical help she will often evade questions about how she was injured, usually because she thinks she won't be believed or fears retribution from her husband. This is the first contradiction.

Supposedly most health professionals expect injured people not only to seek help but to describe accurately the circumstances of their injury so as to help the practitioner. So unless the health professional is aware of these and other aspects of wife battering, the scenario will continue to be treatment for physical injury or depression on the part of the woman, payment for services rendered by the doctor, and - most likely - a similar appointment between the two in several months.

An obvious solution is to teach better diagnostic skills to all health professionals and to have more effective legal and support protections for battered women - so they needn't fear for their lives if their cracked ribs need taping. These kinds of solutions are obviously easy to make; however, they are not as easy to implement, largely due to attitudes and values of individuals and institutions that reinforce historic perceptions of women as objects and possessions of their husbands.

This is the second contradiction, revealed as we hear battered women describe the experience of actually telling their doctor or another health professional about their battering and receiving responses ranging from victim blaming to the prescribing of valium. Women are refused further referrals, or are referred for counselling with their husbands, to help with the "communication difficulties" the couple is perceived as having.

Why does this happen? What has dulled the practitioner's usually active diagnostic and assessment skills? It has been suggested that as doctors are trained to deal largely with physical or organic illness, they feel uncomfortable with matters requiring some empathetic psychological skills. Certainly as the battering problem unravels itself it is seen not only as a medical problem, but a legal, economic and social problem as well. The 15-minute office visit does not invite anything but denial of the problem, drug prescriptions and referrals to therapists who, of course, will bring their own training to bear on her situation as the doctor just did.

However, Dobash and Dobash point out it is not just a matter of professional ideology or time constraints: "The actions of the individual doctor...are also related to his or her personal ideas about the family and marriage and the use of violence within it." (Dobash and Dobash, Violence Against Wives, 1979, p. 186) Personal bias, sexist attitudes reflecting beliefs in the masochism of women and the right of the husband to use force to gain authority are just as common and possible in health professionals as they are with social service and criminal justice personnel, not to mention large parts of the general population.

Attitudinal change cannot be legislated. However, it is simply not good enough to say that nothing will change until people change their own attitudes, and therefore all we need is more public education. One can devise departmental, institutional and governmental policy requiring certain actions be carried out. In the case of battered women and the health professions there are policies and practices, both general and specific, that if enacted, would begin to offer some consistent assistance and protection. Chapter six will discuss these points further.

# CHAPTER SIX

## WHAT WOULD PROTECTION FOR BATTERED WOMEN LOOK LIKE?

"WOMEN WHO HAVE BEEN BATTERED ABOVE ALL WANT IMMEDIATE PHYSICAL PROTECTION FOR THEMSELVES AND THEIR CHILDREN. AFTER OR PREFERABLY ALONG WITH PROTECTION THEY WANT EMOTIONAL SUPPORT.... TO PROVIDE THE SUPPORT WOMEN WHO ARE BATTERED SAY THEY NEED, ACTION IS REQUIRED ON SEVERAL LEVELS: EMERGENCY SERVICES, SUPPORT SERVICES, LEGAL SUPPORT AND LONG RANGE PREVENTION."

(Linda MacLeod, Wife Battering in Canada: The Vicious Circle, 1980, p.58)

## CHAPTER SIX - WHAT WOULD PROTECTION FOR BATTERED WOMEN LOOK LIKE?

### VI.A. INTRODUCTION

This concluding chapter of the report provides a review of the suggestions for change arising from our study of protection for battered women.

Specific recommendations on how more adequate protection could be provided are contained in the proposed models of protection which have been examined in detail in previous chapters of this report. It is clear from our research that there are few, if any, simple solutions to the protection problem. To be effective, change in one aspect of one system requires concomitant changes in the rest of the system. For example, in the legal system, a mandatory arrest policy must be accompanied by changes in court procedures, bail, sentencing, et cetera. In addition, the provision of adequate protection for battered women is not only a matter for the criminal justice system to deal with but also requires changes in the health care and social welfare services, practices and policies.

It is possible to draw two overriding conclusions from our research. The primary conclusion would be: Wife assault is a crime, subject to the provisions of the Criminal Code of Canada, and should be dealt with accordingly. Secondly, implementation of the proposed models of protection with regard to the legal and the health care systems would provide more adequate protection for battered women. (It should be noted that our informants' views of the social welfare system suggest it does not lend itself to a "proposed model of practice" per se.)

The aim of this chapter is to review some of the major considerations to be taken into account in improving protection for battered women. We begin with a rationale for providing protection. Next we review the suggestions for changes in policies and practices that have arisen from our research. Finally, we review initiatives required in the education of professionals and the public regarding wife assault.

Since our research was undertaken in British Columbia, the suggestions for change we present are, for the most part, specific to the way the legal, health care and social welfare systems operate in this province. Nevertheless, other studies of wife assault, including those from other

parts of Canada, the United States and Britain, suggest that sufficient commonality exists between systems to make our research findings relevant in those areas as well.

## VI.B. A RATIONALE FOR WHY BETTER PROTECTION FOR BATTERED WOMEN IS NEEDED

There are two myths about protection for battered women. The first myth is that there is no protection for battered women under the law. The second myth is that there is protection for battered women, if only they would act and take advantage of it. From our investigations, we recognize that the legislation to protect battered women already exists. Criminal and civil sanctions against batterers are in place and they range from imprisonment to the forfeiture of sums of money and denial of custody of children and/or access.

However, in the application of the law, discretion and attitudes have shaped both practice and policy so that the protection actually available to a battered woman varies from one lawyer to another, from one justice of the peace to another, from one judge to another, from one court to another, and so on. The legal model developed in this study is an attempt, as we have stated, to define and bridge those gaps in practice so that the law can offer protection to women who are victims of assault by their husbands.

To date, as our current practice models show, the social service and health professions have not dealt directly with wife battering. Their practices have focussed narrowly on the treatment of injuries and the protection and care of children.

Let us look briefly at some of the non-protective practices of the legal, health and social service systems: First, not arresting batterers except when the assault is witnessed by police, or is very severe, does not protect battered women. Not believing a battered woman's account of her assault, or asking why she hasn't already left the relationship, also mitigates against protection. Prescribing tranquilizers to a woman who is in a persistent depression, or insisting on counselling the batterer and his victim together, do not protect the battered woman. Focussing on the protection of children without paramount attention being paid to the safety of their mother certainly doesn't protect the woman. Accepting stories of recurring injuries, miscarriages, depression et cetera, without asking questions about possible battering, does not protect the battered woman, nor does it assist in returning her to a state of health. Asking women if they are sure they want charges laid against their husbands; insisting that battered women seek maintenance support from their husbands

before granting them social assistance; encouraging the battered woman to stay in the relationship to keep the family together - all these practices undermine the application of protection for battered women that does exist under the law.

Before moving on to suggest changes in policy and practice, it is important to emphasize the need for the legal, health and social service disciplines to cooperate and interconnect in their work with battered women and batterers. A victim of battering may seek help from any one or all of these systems. A coordinated set of protocols, agreed-upon intervention strategies, and equal commitment to protection would go a long way towards improving the situation for workers in each system, and, of course, would help battered women as they seek assistance. The key point to be made is that aside from the criminal justice system's responsibility to act on infringements of the Criminal Code, the health system's responsibility to respond to injuries and illness, and the social service system's responsibility to protect children and administer social assistance to those in need, neither health, social service nor legal staff should be expected to bear the protection load by themselves. Wife battering, like child abuse, requires a coordinated response from the various professions and systems involved.

## VI.C. SUGGESTIONS FOR CHANGE ARISING FROM THE STUDY

### VI.C.1. Policy and practice changes

#### (a) Social Services

The Ministry of Human Resources' mandate of supporting the family unit and protecting children determines how work at the individual level is organized, including limits of the task, the priorities in terms of time and effort, the appropriateness of referrals elsewhere, the focus - through maintenance payments - on shoring up the family as an economic unit, and the conditions for eligibility of certain benefits such as childcare.

Consequently a battered woman is no one's real responsibility; protection and assistance to a battered woman is not part of the job of the Ministry, unless workers interpret it to be so because of her status as a dependent who has lost her sole means of support, her husband, or because they consider her children to be at risk.

Policies designed to maintain the family and protect children often undermine the efforts of women to protect themselves and their children. Further, due to variations in policy interpretation, many essential services which the Ministry is capable of providing, such as childcare, and monies for furniture and clothing, are not always provided. The fact that no distinction is made between women who are battered and women seeking help for other reasons, brings a series of inappropriate policies to bear on the battered woman's situation. And as we have seen, such policies can affect her safety unless they are ignored or bypassed.

Therefore, the Ministry of Human Resources needs more specific consideration of battered women in financial and social service policy, and should develop and disseminate a battered women's handbook comparable to the handbook on child abuse/neglect.

For various reasons, battering is not always presented directly to the social worker as a problem by the battered woman. Sometimes - out of fear of disbelief and/or retribution - it is not spoken of at all. When she does raise the problem of wife battering in her marriage or relationship, it is often not assessed as a problem by MHR workers; or if it is seen as a problem, it is defined as falling outside the Ministry's mandate, particularly if children are not involved. Overall this results in a lack of supportive and sympathetic response towards battered women

in many, but not all, cases. Individual workers may or may not be helpful - there is nothing which compels them to be. Many Ministry of Human Resources workers provide excellent assistance, interpreting policy as openly as they can and offering individual, empathetic service to the battered woman and her children. However, workers who do take such an interest do so at the risk of having to work to some degree at cross purposes to the Ministry. Other workers provide little individual service. This could be due to personal choice, stemming from their beliefs and attitudes about battering; or it might be a result of the way they, or their colleagues, interpret MHR policy. Some, by carrying the MHR mandate for protection of children to its extreme - assuming only the children are at risk - do harm to the battered woman by rendering her needs invisible and unimportant.

Therefore, the Ministry of Human Resources needs to develop a comprehensive and intensive training program for social, financial aid, and family support workers, aimed at increasing their awareness of the nature and severity of the problem, and helping equip workers to intervene appropriately in battering situations. This program should offer: (a) assessment and interview skills specific to the situation and needs of battered women; (b) knowledge of protection needs and provision of a range of resources specific to battering situations; and (c) provision of appropriate referral information, especially regarding those services offered by community-based groups. The Ministry of Human Resources should consult and contract with community groups such as B.C.'s Battered Women's Support Services and transition and second stage houses for the development of this training program.

The Ministry of Human Resources also needs to develop some of the resources for battered women that were mentioned earlier in this study. These include consistent support for transition houses and second stage housing for battered women throughout British Columbia, and advocacy services within the Ministry of Human Resources for battered women. And the creation of line positions specifically to work with battered women would help to solve the problem of battered women being "no one's real responsibility."

(b) Health

The health implications of the statistics on wife battering are phenomenal. However, they are as yet unrecognized by many health professionals. A recent study completed under the auspices of the School of Medicine and Centre for Health Studies at Yale University states the following:

- 21 per cent of all women who use the emergency surgical serivces are battered;
- almost half of all injuries presented by women to the emergency surgical services occur in the context of abuse;
- battering accounts for one in every four suicide attempts by all women;
- half of all rapes to women over 30 are part of the battering syndrome;
- battered women most frequently and disproportionately turn to nontrauma services for their health care, rather than services that primarily treat severe injury;
- using current diagnostic techniques, medical personnel diagnose one battered women in 25;
- the current pattern of medical response contributes to the battering syndrome. (Evan Stark et al, 1981,p.v)

Furthermore, says Stark, battered women comprise a significant percentage of rape victims, suicide attempts, psychiatric patients, mothers of abused children, alcoholics and women who miscarry or abort. Battered women make multiple visits to the medical and psychiatric services for general health problems which are as much a part of battering as physical injury, but which are not recognized as being related to assault. (Evan Stark, et al., 1981, p.vii)

As stated in the summary to the health chapter and repeated in other sections of this study, the reluctance of battered women to talk about or seek help for their battering, the tendency of professionals to treat only the most obvious "symptoms," the lack of practitioner time, et cetera, all work to prevent appropriate health protection, and actual physical protection, for battered women. And of course, attitudes reflecting stereotypical beliefs about the masochism, hysteria and dependence of women, not to mention notions about the sanctity of the family, also serve to undermine protection for battered women.

As we have pointed out, although attitude changes cannot be legislated, policies and practices can be developed and implemented to ensure the carrying out of appropriate assistance to battered women on at least a basic level.

Some of the individual and departmental practices aiding battered women as described in chapter five of this study are commendable. However, these practices should be carried a step further and developed into policy to govern the actions of all staff. Written policy, not unwritten rules or generally agreed-upon practice, ensures the continuation and expansion of good practice in each working area. Furthermore, written policy works to avoid changes in practice in the event of staff turnover.

Further to this, policy on the treatment and management of wife battering, based on the health protection model presented in this study, should be developed and disseminated throughout all the health professions. Just as health policy and protocols have been developed for victims of rape and child abuse, so should they be extended to victims of battering. Hospitals, clinics, public health departments and so on should appoint working committees to develop this policy. Active consultation should be sought from community groups and individuals already working directly with battered women, such as transition houses and support services for battered women.

Professional organizations must undertake this work as well, especially since so many health practitioners work in private practice. For example, the Registered Nurses' Association of B.C., and B.C. Medical Association, the Emergency Nurses Group, Feminist Counselling Association, B.C. Psychological Association and others, should appoint working committees to draft policies and practices in order to assist their members in the work with battered women.

Finally, community-based health services and preventive health services such as crisis lines, lay counselling groups, alcohol and drug treatment centres et cetera should also act on these recommendations. In fact, any organization working predominantly with women and families - daycare centres, family places, women's centres, community drop-ins, homemakers, community centres - would be doing a service to their clients by incorporating the assessment, interview and referral procedures of the health protection model into their work.

(c) Legal

The lengthy review of the legal system's current practice in chapter three of this study precludes any further statement regarding the need for change. The generally positive response to the proposed model of legal protection also encourages us simply to recommend that implementation of the model begin as soon as possible. In fact, the striking of working committees to implement the proposed model of legal protection for battered women should occur immediately, and at all levels - federally, provincially and in local legal work settings. There are, however, some points to make at this time regarding specific policies and practices of the justice system.

First of all, there should be a re-examination of police practices reagrding arrest and crisis intervention in wife battering. Recent studies indicate that crisis intervention techniques developed over the past decade to defuse and conciliate wife assault situations do not reduce the incidence of assaults, nor do they effectively protect battered women. (Nancy Loving, Responding to Spouse Abuse and Wife Beating: A Guide for Police, 1980, p.35) The International Association of Police Chiefs has recommended: "A policy of arrest, when the elements of the offence are present, promotes the well-being of the victim...the officer who starts legal action may give the wife courage she needs to realistically face and correct her situation." (International Association of Chiefs of Police, Wife Beating: Training Key No. 245, 1976). And a recent American study on prosecution of spouse abuse reviewed the results of 29 demonstration projects mandated to encourage and coordinate the efforts of police, prosecutors, hospitals, mental health and social service agencies. The author notes: "Immediate arrest may prevent further injury... (and) communicates to the parties that the abuser has committed a crime, that the victim has a right not to be beaten, and that the criminal justice system will take action to stop the abuse. If the police remain...for 20 minutes to talk to the couple and 'cool things off,' and then depart, the police leave both the victim and the abuser with the message that no crime has been committed, and that no serious consequences will follow from calling the police." (Lisa Lerman, Prosecution of Spouse Abuse: Innovations in Criminal Justice Response, 1981, p. 149)

The findings of these studies, the knowledge that women continue to

be battered despite present police interventions, and the overwhelming support given to the mandatory arrest and non-arrest policies in the model of protection, lead us to urge review and revamping of present policies and practices regarding arrest in wife assault, and the training of police officers.

Consideration of proposals for change presented in the model for protection should also take into account the elimination of any practices by crown prosecutors or justices of the peace to discourage victims from following through with prosecution. Again, recent work on setting up systems to protect the interest of victims and to encourage their full cooperation indicates that there is "no correlation between any identifiable characteristics of the cases or the victims and the likelihood of cooperation. The probability of victim cooperation is in fact better predicted by the conduct of the prosecutor than by the conduct of either the victim or the defendant." (Ibid, p.41) Just as it is now mandatory to report child abuse to the appropriate authorities, there should be full consideration of ways to ensure that battering is treated as a crime against the state, with the responsibility for laying and proceeding with charges taken out of the battered woman's hands when appropriate.

Clearly the practice of diverting the vast majority of wife battering cases to family court has serious ramifications for the protection of battered women. The positive aspects of family court staff providing information, advice, and support counselling are countered by the concomitant de-criminalization of wife battering by family court which serves to excuse the battering husband. Surely it is possible to have all criminal assault cases heard in criminal court along with the provision of referral to support services as needed.

The de-criminalization of wife battering arises directly out of the belief that violence done by a husband to his wife is different from stranger-stranger violence. This difference, despite the fact that the Criminal Code does not differentiate between assaults occurring in families and those between strangers, arises - as our informants pointed out - because of the ongoing emotions and relationship between the parties involved. The efforts by family court staff to conciliate may be based on concern for the parties involved. But as we have seen, these same efforts minimize the protection for battered women and diminish the

seriousness of the offence in the eyes of the batterer. Informants said women came to them because they wanted the beatings to stop. The first step towards making those beatings stop is to indicate with appropriately firm legal sanctions that beating one's wife is not acceptable behaviour under any circumstances. We appreciate the insight shown by one informant in the following statement:

> In my mind, family violence is more serious than stranger-stranger violence, because in stranger-stranger violence you're just in the wrong place at the wrong time.

We also suggest that a strong component of the practice of de-criminalization is based on a disbelief and distrust of battered women by some members of the criminal justice system. We base this statement on the fact that in just under half of our interviews, legal informants would at one moment claim interest in changing the system and in another moment would make any one of the following statements:

> In family violence and rapes, women are devious.
>
> No assault is tolerable, but we may be able to understand why he did it enough to allow for release on bail.
>
> No bail for second offences opens up the possibility of abuse by the woman...I don't want a person incarcerated on a mere complaint.
>
> The lawyer for the husband pointed out...that the assault resulted because the husband went to make his own lunch at night and there was no bread in the house. My feeling was the least she could do was do the shopping. I had to agree with the husband that he could expect bread in the house.
>
> You're never going to eliminate wife battering; it's a fact of life.
>
> How can you blame people for some events, even battering? A woman may drive the man nuts.
>
> Women would abuse the system to a certain degree. It'd be a threat to their husband. Common assault is pretty easy to fake and she'd have the power of 30 days in jail.

Attitudes shape practices. The application of a law designed to

protect battered women from their husbands' assaults varies from one criminal justice system person to another. It is, in fact, a form of discrimination on the basis of sex. Wife assault is a crime, just as assault between strangers is a crime. We suggest that the ministers responsible for the federal Justice Department and the provincial Attorney General's Ministry undertake the necessary steps to reinforce the fact that the Criminal Code's assault provisions do apply to wife assault cases.

The issue of counselling for batterers is also relevant in this section on policy and practice. The model of proposed practice suggests that there be a counselling option for first offenders. The counselling would be court-ordered and would constitute a part of the bail terms. Some informants in health, social service and legal interviews commented on this aspect of the model, and all were supportive of the suggestion as a way of offering some opportunity for the battering husband to change his behaviour.

Counselling services for wife batterers are relatively new. The concept is worthy of investigation and evaluation. However, some recent studies indicate that such approaches must be carefully developed and monitored to ensure protection for the wife. One study suggests:

> Group leaders must remember that domestic violence always involves the possibility of one or more persons dying. Safety should always be the first and last consideration whenever attempting a new technique, assuming that details in a story are true, or that the man is really progressing very quickly. Safety checks must be done before and/or after every group. The safety check can be done either with the battered woman herself or with the shelter staff who is working with her. (Frances Purdy, Norm Nickle, Practice Principles for Helping Men Who Batter, 1981, p.2)

After reviewing the available literature on counselling programs for batterers, and with the focus of protection for battered women paramount in our minds, we make the following suggestions regarding the practice of counselling batterers. First, few batterers participate voluntarily in counselling, so if treatment is decided on it must be court-ordered. Second, counselling should be initiated early in the criminal process as the men are most susceptible to treatment immediately

after a violent incident, before the blurring of memory enables them to minimize and deny their behaviour. (Therapists state that minimization and denial of violence is a consistent characteristic of batterers.) Third, counselling should not be ordered if the wife feels that prosecution and incarceration are more appropriate, or if she is afraid for her safety. Fourth, the primary goal in treatment must be to stop the battering, not to improve the relationship. Fifth, the batterer should not be permitted contact with his wife during the counselling phase. Sixth, if the batterer misses counselling sessions, assaults his wife, or breaks any other terms of bail, the counselling should be terminated and criminal prosecution resumed.

We are emphatic that counselling must not be considered a "diversion" from criminal proceedings. The batterer must not see the counselling option as a way to "get off," and the courts must not view counselling as a way of diverting wife battering cases away from prosecution.

Finally, a comment on sentencing. Many of our informants were clearly concerned about the issue of sentencing. Their dilemma, as they describe it, lies in the knowledge that although jail holds the possibility of deterrence for the man, and offers some indication to the woman, and the community, that there are consequences to beating one's wife, it still holds no rehabilitative prospects for the husband. Some informants used this in their rationale for not sentencing persistent wife beaters to jail terms.

This rationale would not apply to persons convicted of armed robbery or rape. It is common knowledge that incarceration offers minimal opportunities for rehabilitation. However, as Martin says, there are life-threatening consequences for women if batterers are allowed to go free:

> Many people object to sending a violent husband to jail; they believe that he will not be rehabilitated in jail and will only return to vent his pent-up rage against his wife. Others reject the concept of enforced therapy, arguing that unless a client initiates therapy out of the desire to change, the treatment will be ineffective. But what are the alternatives? How else is the cycle of marital violence to be broken? ...the risk of failure is preferable to doing nothing at all and allowing husbands to beat their wives with impunity. (Del Martin, Battered Wives, 1976, p. 180)

One benefit of stiffer sentencing in wife battering cases (or sentences at least equivalent to those issued in stranger-stranger assaults) is that it reinforces to the batterer, to the victim and to all parts of the criminal justice system, that wife battering is an assault that society will not tolerate. Several of our informants commented specifically on the fact that police officers tend to enforce breaches in cases of wife battering when they know that the courts will act decisively on the breach charge.

One legal informant stated that the "public sees wife battering in simplistic terms - 'Every wife batterer should be locked up,'" and said assumptions about treating wife batterers through some punitive mechanism were fantasies of the public. The true fantasy, we suggest, lies in the assumption, by the battered woman, that an assault on her by her husband will be treated by the criminal justice system as seriously as an assault on her by a stranger.

The criminal justice system is made up of many parts, all of which must fit together to offer more effective protection to battered women. It would not be good enough, for example, for reformed arrest policies to exist in a vacumm - there must be changes in policies which implement the law. We urge the immediate and full consideration of all aspects of the proposed model of legal protection for battered women as a way to begin this work.

### VI.C.2. Education

Education about wife battering is required on three fronts: in-service professional training; public education; and inter-disciplinary education.

Ongoing in-service training should be developed and implemented for all legal, health and social service professionals. These sessions can be designed to include specific knowledge and skills to assist staff in their work with battered women. Background on the history of wife battering and a review of attitudes towards wife battering are essential as well. Specific models for in-service training have been developed in British Columbia by Battered Women's Support Services and the Community Programs Division of the Justice Institute, as well as by various individuals working in the field.

Public education on wife battering was often seen by our informants as being very necessary. Public education can cut through the isolation of the battered woman by offering an anonymous way for her to find out about resources; and it can raise public consciousness as well. *Suggestions included posters and billboards relating the message that no* woman deserves to be beaten and suggesting where to go for help, and a public relations campaign on wife battering. This campaign could be sponsored by a federal or provincial health or legal jurisdiction, and should focus on raising the general public's awareness of the issue. Similar campaigns have been designed in the past on child abuse and alcohol abuse.

Transition houses and other organizations doing direct advocacy work with battered women should also be funded adequately to carry out public and professional education. Their direct experience and expertise are most valuable to all professionals and should be utilized. The funders of these groups must continue to fund the direct service work that is so necessary, and should include additional monies to ensure effective educational work can be undertaken as well.

Inter-disciplinary communication is also vital. As we said earlier, cooperation between legal, health and social services in training and practice is essential if the full range of protection is to be available to battered women. Cross-system educational workshops would be one way of facilitating this; another would be the development of inter-ministerial committees (such as the one on child abuse) to develop and implement policy guidelines.

The primary focus of education programs must be on changing practices. It is the practices and behaviour of individuals that are of major concern. However, as noted earlier, it is clear that attitudes shape practices. Therefore, to be effective, education programs must address current attitudes towards women, marriage, the family and wife assault which are based in centuries-old beliefs. Wife assault has been condoned throughout history. It is only in recent decades that Canadian women have been able to seek full protection against violent husbands under the law. But to obtain this protection still requires a struggle on the part of the battered wife.

Jalna Hammer suggests that "the male use of force or its threat towards women has two currents; one is to exclude participation or restrict behaviour, while the second is to compel particular responses. The two interact so that achieving one is an aid in achieving the other." She states that exclusion, the first current, carries with it the threat of retaliation (i.e. the use of force) should women become "uppity." The second current is to "compel [women] to behave in given ways or to undertake certain tasks: particularly nurturative and housekeeping work." (Jalna Hammer, Violence and the Social Control of Women, 1978, p. 232-3)

The last decade has brought documentation of the effect of these beliefs about the socially ascribed authority of men to make the rules in marriage - and to use violence to uphold that authority. (See appendix III Selected References.) The struggle lies in undoing what Murray Straus calls the "fundamental set of factors that bring about wife beating - the sexist structure of the family and society." Straus's suggestions for change include: eliminating the concept of husband as 'head of the family' from its continuing presence in law, religion and family life; eliminating unequal pay; reducing or eliminating the sex-typed pattern of family role responsibilities; establishing comprehensive and high quality day care; elimination of sex role stereotyping; the granting of full equality for women; full and equal employment opportunities for men and women; and the reduction of the extent to which society evaluates people on the basis of their economic achievements. ( Murray Straus,"A Sociological Perspective on the Prevention and Treatment of Wife Beating," in Maria Roy (ed.), Battered Women: A Psychosociological Study of Domestic Violence, 1977, p. 194)

To increase the protection available to battered women requires, ultimately, dealing with the factors outlined above. It is possible to begin the work of providing better protection by changing practices and policies and, through education, to minimize the effect of discriminatory attitudes.

This study of protection for battered women moves beyond proving that protection from violent husbands is difficult for women to achieve. It breaks into the new territory of designing workable models of legal, social service and health protection for battered women.

# APPENDICES

## APPENDIX I

### INTERVIEWS CONDUCTED

| category | number | totals |
|---|---|---|
| Battered Women | 9 | 9 |
| **Medical** | | |
| Physician | 3 | |
| Head Nurse - Emergency Department | 1 | |
| Clinical Nurse Specialist - Psychiatry | 1 | |
| Associate Nursing Co-ordinator - Public Health | 1 | |
| Clinical Psychologist | 1 | |
| Obstetrical Nurse | 1 | |
| Psychiatric Social Worker | 1 | |
| Social Worker with Mental Health | 1 | |
| Community Care Team (Social Worker and Psychiatric Nurse) | 1 | |
| | | 11 |
| **Ministry of Human Resources** | | |
| Social Worker | 3 | |
| Family Assistance Worker | 2 | |
| Family Support Worker | 2 | |
| District Supervisor | 2 | |
| Regional Manager | 1 | |
| Coordinator of Income Assistance and Adult Rehabilitation | 1 | |
| | | 11 |
| **Legal** | | |
| Police: Constables; Car 86 worker; Psychologist responsible for police training; Police/MHR liaison worker. | 5 | |
| Lawyer | 1 | |
| Justice of the Peace at Family Court | 2 | |
| Family Court Prosecutor | 2 | |
| Criminal Court Prosecutor | 1 | |
| Family Court Counsellor and Probation Officer | 3 | |
| Intake Worker at Family Court | 1 | |
| Supreme Court Judge | 1 | |
| Provincial Court Judge - Family Division | 3 | |
| Provincial Court Judge - Criminal Division | 1 | |
| | | 20 |
| Total Interviews Conducted | | 51 |

APPENDIX II

Protection Project: Interviews May 7, 1981

Aide Memoire

1. Introduction: (Aim = to explain purpose of interview, encourage co-operation, put the person at ease.)

- brief outline of project - who we are, what our aim is.
- why person asked for interview.
- confidentiality...
- frame of interview, areas interview will cover, etc.

2. General discussion of protection: (Aim = to find out what responses are to battered women [in their view and from perspectives of those who provide services or protection].)

- elicit comments on their experience with protection for battered women, the nature of their contact, etc.
- comments on existing services, policies (if any), etc.
- do they think their views are representative of others or not?

3. Specific knowledge of procedures for dealing with wife-battering cases:

(Aim = to delineate services available and policies defined by people we interview in their capacities dealing with the problem - i.e. to find out what they do and what their organizations ask/require them to do - if anything.)

- for battered women - specific experiences they've had trying to get protection.
- for professionals - in their own area, how do they proceed, what do they do, alternatives that are possible;
  - in other areas, what do they know about procedures/ practices, what is their understanding of how others deal with cases of wife battering, how other services/ policies work.

4. Models of Protection - to be presented in the same way to each person:

(Aim = to work with them on defining more adequate procedures for handling situations, cases, crises, etc.: (a) using present 'services'/system; (b) modifying present 'services'/system.)

- begin with 'weak' model (i.e. the current situation), then move on to stronger model. Outline each model briefly, point by point, getting comments on the 'weak' one first, then comments on the stronger model.

N.B. - Record comments in the first person - i.e. write down the interviewee's actual words - as completely as possible. Note your own comments or questions, whenever necessary, making clear the distinction between your comments and those of the interviewees. Be sure to record the reason(s) for time spent, more or less extensive comments by interviewees, changes in procedure of interview, etc. on specific aspects of the models. Be sure to number each interview.

## APPENDIX III

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